



# MAYOR AND COUNCIL AGENDA

NO. 2 DEPT.: / Community Planning and Development Services DATE: January 31, 2005  
STAFF CONTACT: Arthur D. Chambers, AICP, Director

**SUBJECT:** Discussion of Town Square Condominium Documents and Plats and related issues.

**RECOMMENDATION:** Receive information in preparation for formal action. The formal action will be for Mayor and Council to authorize the City Manager to sign the documents. That action should be on a Mayor and Council agenda in late February, 2005.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☒ Other: General  
Development Agreement, precedent to closing on development rights.

**DISCUSSION/HISTORY/BACKGROUND:** As part of the Town Square Development, the future ownership of the various buildings will be a combination of the City (parking garages), Federal Realty Investment Trust [FRIT] (retail), and RD Rockville LLC (residential). Since portions of each of the buildings will be owned by different entities, condominiums will be created. When a *condominium regime* (the entire building and adjacent land) is created with multiple *condominium units* (i.e., garage, retail or residential), there are *general common elements* that are used by all units (i.e., driveways, some hallways, sidewalks, etc.). There are also some *limited common elements* that are shared by two of the units (i.e., stairwells, roofs, etc.). In some instances there are elements of one unit that extend through another unit (i.e., air shaft, stairwell).

This will be the first time the City has an ownership interest in a condominium. Being an owner entails different responsibilities as compared to being the governing entity. For example, the governing body of the condominium regime will be a three-member body with the City having an equal vote with the retail owner and the residential owner. (For the purposes of this discussion, the residential owner today is RD Rockville LLC and the president of the Residential condominium sub-unit board after the individual units are sold). That board will be responsible for setting yearly

budgets, assessments, obtaining insurance, etc. for maintenance, repairs, replacements, etc. The assessments will be made on all units including the garage.

Due to the complexity of the physical structure and to insure future use, access, maintenance, etc., the legal documents are quite extensive. The documents establish the rules and regulations that will govern future relationships of the co-owners.

The four primary documents are:

- a) Declarations – Submit the property to the Maryland Condominium Act and divide the property into units and common elements (Attachment 3, circle 20).
- b) Bylaws – Addresses the operation of the condominium by the council of owners (Attachment 4, circle 67).
- c) Rules and Regulations – Establishes the standards and regulations for use, maintenance, hours of operation, etc. (Attachment 5, circle 98).
- d) Plats – The drawings depicting units, elements, easements, etc. (Attachment 2, circle 18).


To date, documents for Block 1/2, Block 3b and Block 5 have been drafted. For this discussion, only the documents for Block 5 are attached. All of the other blocks are modeled on Block 5. The City will not be a unit owner in Block 3b. FRIT and the City also will need to eventually prepare condominium documents for the cultural arts building. Attachment 1 is a summary of the text documents. Attachment 2 is a copy of a portion of the condominium plats. The latest draft of the Block 5 Declarations, Bylaws and Rules and Regulations are included.

A related document is the easement plat. That document will also need to be approved by the City. Basically, the easement plat will grant to the public access and use rights along the sidewalks and access drives. It also will establish utility areas and identify outdoor seating areas.

All of the condominium documents, except the cultural arts building, need to be completed and approved by the Mayor and Council prior to closing on the development rights in March. It is anticipated that the final documents will be scheduled for formal action by the Mayor and Council in late February. A copy of a closing checklist is attached for information.

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PREPARED BY:

  
Arthur D. Chambers, AICP, Director

APPROVE:

  
Scott Ullery, City Manager

1/26/05  
Date

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**LIST OF ATTACHMENTS:**

1. Summary of text documents.
  2. Copy of a portion of the condominium plats.
  3. Declarations for Block 5.
  4. Bylaws for Block 5.
  5. Rules and Regulations for Block 5.
  6. Closing checklist.
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ROCKVILLE TOWN SQUARE  
CONDOMINIUMS FOR BLOCKS 1 & 2, 3B, 4 AND 5  
OF ROCKVILLE TOWN SQUARE

Executive Summary

**I. Condominium Structure Overview.**

Within each of these Blocks there will exist separate ownership interests. The City of Rockville (“City”) will own the public parking garage areas, Federal Realty Investment Trust (“FRIT”) will own the commercial areas and an RTS-RD Rockville, LLC entity (“RTS”) will own and develop the residential areas.

- Blocks 1 and Block 2 will be combined into a single, master building condominium regime because the residential units within these Blocks are interconnected into a single structure. This master building condominium regime will initially consist of three (3) condominium units: (i) the Parking Unit to be owned by the City, (ii) the Commercial Unit to be owned by FRIT, and (iii) the Residential Unit to be owned and developed by RTS.
- Block 3A will not be subjected to a condominium regime and therefore is not discussed in this Executive Summary.
- Block 3B will be subjected to a condominium regime; however, no parking will exist on Block 3B. Therefore, the City will not be a member of the condominium regime for Block 3B.
- Block 4 will be subjected to a separate master building condominium regime, that will initially consist of three (3) condominium units: (i) the Parking Unit to be owned by the City, (ii) the Commercial Unit to be owned by FRIT, and (iii) the Residential Unit and related Residential Parking Facility to be owned and developed by RTS.
- Block 5 will be subjected to a separate master building condominium regime, that will initially consist of three (3) condominium units: (i) the Parking Unit to be owned by the City, (ii) the Commercial Unit to be owned by FRIT, and (iii) the Residential Unit and related Residential Parking Facility to be owned and developed by RTS.

**II. The Condominium and How it Works.**

A condominium may be used for establishing and managing the operation of mixed-use ownership projects. A condominium refers to a form of ownership. Owners within the condominium can own separate “parcels” of real estate, which are generally bounded within the inside surfaces of the walls and ceilings, and other boundaries of a particular space.

All unit owners within a condominium own a separate condominium “unit.” They also each own essentially in common with the other unit owners an undivided interest in what are referred as

the common elements of the condominium. The Common Elements are generally the structural or shared areas of the condominium property.

In Maryland, the Maryland Condominium Act ("Act") generally provides a framework for the operation and ownership for condominium units. The fundamental documents required under the Act to create a condominium are the Declaration, the Bylaws, and the Condominium Plat. However, in a mixed-use condominium project such as this, rules and regulations governing the condominium are also essential for the efficient operation of the condominium project.

The Declaration and the Plat submit the Property to the Act and divide the Property into units and common elements. The Declaration is accompanied by the Bylaws. The Bylaws address the operation of the condominium by the Council of Unit Owners (also commonly referred to as the "association").

Below is an Executive Summary of the significant provisions contained the condominium documents for Blocks 1/2, 4 and 5. The condominium documents for each of these Blocks consist of Declaration, Bylaws and Rules and Regulations (the "Condominium Documents"). The Condominium Documents read exactly the same for each Block except where differences are noted in this Executive Summary.

### **III. Summary of the Declaration.**

Article 1. Definitions. Article 1 sets forth the defined terms used throughout the Declaration, Bylaws, Rules and Regulations and Plat. RTS will own Blocks 1 & 2, 3B and 5 when the Declaration and Plat for these Blocks are recorded; therefore RTS is the Declarant under the Declaration for these Blocks. The City will own Block 4 when the Declaration and Plat for Block 4 is recorded; therefore the City is the Declarant under the Declaration for Block 4.

Article 2. Creation of the Condominium Regime. Article 2 describes the creation of the Condominium regime and each Unit Owner's Percentage Interest in the Common Elements. Teach Unit, the dimensions of the Units and the Common Elements will be shown on the Condominium Plat. Each Unit Owner's Percentage Interest in the Common Elements, General Common Expenses and Common Profits of the Condominium are attached to the Declaration as Exhibit D. The Residential Unit Owner and Commercial Unit Owner each have a 33% Percentage Interest allocation. The Parking Unit Owner has a Percentage Interest allocation of 34% (for rounding purposes). Each Unit Owner has an undivided interest as a tenant in common in the General Common Elements in accordance with its Percentage Interest.

- General Common Elements. The General Common Elements consist of the Property, except for the Units and any Limited Common Elements. The General Common Elements will be shown on the Condominium Plat.
- Limited Common Elements. The Limited Common Elements consist of Common Elements that are designated as Limited Common Elements on the Condominium Plat, or a part of the Common Elements that serve less than all of the Units, as determined by the

Board of Directors of the Condominium to be Limited Common Elements. Decisions concerning the use, operation, maintenance or repair of the limited common element appurtenant to one or more Units shall be solely decided by the Unit Owners benefited by the use of the limited common element.

- Reserve Common Elements are General Common Elements designated as Reserved Common Elements on the Condominium Plat or those elements where a Unit Owner has been granted irrevocable license for the use and maintenance of the General Common Elements by such Unit Owner. Examples set forth in the Declaration of Reserve General Common Elements are pop-out storefronts, outdoor dining areas to be used by FRIT and kiosks. FRIT shall have the right from time to time to designate portions of the General Common Elements adjacent to or within reasonable proximity of the Commercial Unit as a reserve general common element. The Commercial Unit Owner shall have priority over the other Unit Owners to use Reserved General Common Elements for outdoor dining and seating. Any Unit Owner who is granted a license to use a Reserved General Common Element shall be responsible for the care, operation, cleaning, maintenance and repair of the Reserved General Common Element during the term of such license.

Article 3. Easements, Cooperation in Development and Alternative Percentage Allocation. For the most part, Article 3 of the Declaration provides the Board of Directors, Council of Unit Owners and each Unit Owner with the necessary and requisite easements throughout the Property for utilities, ingress, egress and access. Article 3 also provides such parties with those easements necessary for each of them to carry out and perform their respective maintenance, repair, operations and other obligations required to be performed pursuant to the Condominium Documents. The Unit Owners may, however, establish restricted areas within their respective Units where entry by such parties shall be exercised in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Unit. Examples of restricted areas within a Unit may include jewelry stores, bank vaults, cash handling areas, pharmacy inventory storage areas, and display areas.

Article 3 also establishes an easement granted by the Parking Unit Owner for the benefit of the permitted Parking Beneficiaries for ingress, egress and access through the Parking Unit for parking. Note that the Parking Unit will not be a public garage that is dedicated to the public. Instead, the City will own the Parking Unit as a "private condominium unit." The Parking Beneficiaries are the Residential Unit Owner, Commercial Unit Owner, owners of dwelling Units within the Residential Unit, and their respective agents, employees, tenants, subtenants, licensees, customers and invitees.

Article 3 also establishes general and requisite easements for the Unit Owners for the purpose of respective construction activities upon the Property and development of the Property.

Section 3.2(h) of Article 3 establishes an easement in, over, under, through and across the Common Elements of the Property for the benefit of the Commercial Management District for the purpose of inspection, operation, maintenance, repair, improvement and replacement of public amenities for the project. The duties of the Commercial Management District will be

governed by separate agreement between the Commercial Management District and the Council of Unit Owners.

Note: In Section 3.2(i) of Article 3, for Block 5 only, there is a non-exclusive easement reserved for the general public for the and right of passage on, through, over and across the pedestrian walkway for purposes of pedestrian ingress and egress to, from and across Block 5.

Section 3.8 of Article 3 provides for alternative percentage allocation and special maintenance expenses for certain General Common Expenses. It is anticipated that the level of use of certain General Common Elements might require a different Percentage Interest allocation for some Unit Owners. Also, that some General Common Expenses will not be shared among the Unit Owners according to their allocated Percentage Interest, again based upon the level of use by the Unit Owners. Therefore, Section 3.8 provides that while General Common Expenses will be shared among the Unit Owners based on their respective Percentage Interests, some costs associated with the operation, maintenance, insurance, repair and replacement of certain portions of the Property shall be treated as special maintenance items, and will be described on Exhibit E attached to the Declaration. These special maintenance items will have an alternative percentatge allocation applied to them as determined by the Unit Owners and/or the Board of Directors.

#### Article 4. Rules, Management.

Section 4.1 provides that the Board of Directors may promulgate reasonable rules concerning the use and enjoyment of the Property. Rules that affect two or fewer Owners shall only require the consent of the effected Unit Owners to be amended.

Section 4.2 provides that the Board of Directors may employ one or more professional experienced Condominium managing agent to oversee the day-to-day operation of all or a portion of the Condominium. The Condominium managing agent shall be entitled to receive a reasonable fee as determined by the Board of Directors.

#### Article 5. Unit Autonomy and council of Unit Owners Authority.

Section 5.1 of Article 5 provides that it is the intent of the Condominium Documents to establish a viable mixed-use condominium whereby the commercial Unit, Residential Unit and Parking Unit can harmoniously exist with minimal disturbance or interference with one another. It is intended that each Unit be able to operate without unreasonable interference from another Unit or Unit Owner, and that each Unit Owner shall have exclusive control over its Unit. Other than the use restrictions set forth in Article 8 of the Declaration (discussed below), nothing in the Condominium Documents shall confer, be deemed to confer any right of review and/or of approval of any Unit Owner or third party with respect to the nature or quality of the tenants, tenant mix, tenant selection or leasing program for the Commercial Unit or the Residential Unit, or leasing program for parking spaces within the Parking Unit.

In addition, the Council of Unit Owners and Board of Directors shall exercise their rights and obligations under the Condominium Documents using commercially reasonable business judgment.

Article 6. Security. The Council of Unit Owners and Board of Directors have the right, but not the obligation, to maintain or support certain activities within the Property designated to enhance safety within the Condominium. The Council of Unit Owners, Declarant or the Unit Owners, their respective successors, their assigns nor any of their respective officers, members, employees, or directors, or affiliates shall in any way be considered insurers or guarantors of security within the Condominium, nor shall any of them be responsible or held liable for any loss, damage, injury or death by reasons of failure to provide adequate security or the effectiveness of the security system within the Condominium.

Article 7. Indemnities. Article 7 provides for mutual indemnities. Each Unit Owner shall defend, indemnify and hold harmless at its sole expense, the Council of Unit Owners and any other Unit Owner against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments to the extent arising out of (i) the development, construction, use, operation or maintenance by such indemnitor of any portion of the Condominium or (ii) the indemnitor's use or exercise of the easements established in the Declaration. The indemnification is not applicable to the extent that any claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment arises out of injury, death or damage occurring in or about the Common Elements and is actually recovered by liability insurance maintained by the Council of Unit Owners.

Article 8. Use Restrictions. Article 8 sets forth various restrictions on the use of Units and Common Elements within the Condominium.

Section 8.2 of Article 8 states that the Unit shall be operated in accordance with the Condominium Documents and applicable law.

The Parking Unit shall always be utilized for parking and related purposes.

The Commercial Unit shall always be used for commercial, retail and related purposes, and the Residential Unit shall always be used for residential and related purposes.

No part of the Residential Unit shall be used for the purpose of an apartment hotel, time share development, assisted living residence, nursing home, homeless shelters, subsidized housing or similar moderate to low-income housing, except that the Residential Unit may be used for corporate rentals that do not exceed 20% of all the dwelling Units within the Residential Unit. The restriction regarding subsidized or moderate to low-income housing does not apply to any moderately priced dwelling units (MPDUs) imposed by the County.

Section 8.2(b) of Article 8 sets out numerous specific restrictions regarding the use of any Unit. These restricted uses generally consist of offensive, illegal or commercially undesirable types of uses.



Article 9. Insurance. Section 9.1 of the Declaration sets forth the insurance to be carried by the Council of Unit Owners. The Council of Unit Owners shall obtain the following insurance in connection with the Condominium:

- Insurance against risks of loss or damage to the Base Building (which is the building except for the Improvements and Betterments located in the building. See Section 9.3, below. This coverage shall be under an “all risk of physical loss” extended form or equivalent policy in amounts of not less than the full replacement cost of the Base Building (exclusive of excavation and foundation costs). Policy shall name the Unit Owners and Council of Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage
- Commercial liability insurance and business auto liability insurance against claims for personal and bodily injury, death or property damage in the amount not less than \$25,000,000.00 per occurrence/annual aggregate. The policy shall name the members of the Board of Directors and Council of Unit Owners as insureds and the individual Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage clauses.
- Worker’s compensation insurance covering all persons employed by the Boards of Directors or the Council of Unit Owners in connection with any work done on or about the Property
- Comprehensive boiler, machinery and pressure-vessel insurance in an amount not less than \$5,000,000.00 per occurrence for damage to Property. Policy shall name the Unit Owners and Council of Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage clauses.
- Builder’s risk insurance during any period in which significant construction, alterations or repairs or reconstruction is being undertaken by the Boards of Directors. This coverage shall cover the total completed value including soft costs with respect to improvements being constructed, altered, repair or reconstructed. Policy shall name the Unit Owners and Council of Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage clauses.
- Any other insurance which the Board of Directors determines is desirable.

Section 9.2 of Article 9 provides that each Unit Owner may not more than every three (3) years reevaluate the adequacy of the insurance coverages obtained by the Council of Unit Owners.

Section 9.3 of Article 9 provides that Each Unit Owner shall carry the insurance required under the Declaration. In addition, each Unit Owner is required to carry “all risk” of insurance for physical loss insurance coverage insuring its Improvements and Betterments. Improvements and Betterments consist of those portions of the interior of a Unit whose removal will not materially adversely affect the structure, safety or exterior appearance of the base building or functionality or any other Unit located within the building.

Section 9.3 also permits the City to self-insure for the insurance coverage the City is required to carry. In summary, Section 9.3 states that:

- During such time that the City of Rockville is the fee simple Owner of the Parking Unit, the City may maintain the insurance required under the Declaration pursuant to the City's self-insurance program and administered by the Division of Risk Management for Montgomery County, Maryland.
- If the City elects to self insure, then the Council of Unit Owners to annually audit the funds maintained and the self insurance program in order to ensure that such funds are adequate to pay out any such claims or potential claims.
- If such funds are determined to be inadequate, then the Council of Unit Owners may purchase the insurance coverage required to be maintained by the City of Rockville and the City of Rockville shall reimburse the Council of Unit Owners the cost of requiring such policy as a special maintenance expense.
- In addition, if the City self insures, the City as the Parking Unit Owner, shall defend, indemnify and hold harmless at its sole expense, the Council of Unit Owners and any other Unit Owner against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments which may be imposed on or incurred by or asserted against the Council of Unit Owners or any other Unit Owner to the extent of funds in the Parking Unit Owner's self insurance program, if the program is insufficient or inadequate for the purposes of paying out such claim.
- This obligation to indemnify by the City as the Parking Unit Owner is not subject to any defense of sovereign immunity that the City might otherwise have and such defense is barred. Section 9.4 provides that with respect to property loss or damage, the Council of Unit Owners and Board of Directors waive any rights of recovery against the Unit Owners and the Unit Owners waive any rights of recovery against the other Unit Owners and the Council of Unit Owners.

Article 10. Repair and Reconstruction after Fire and Other Casualty. Article 10 sets out the general procedures for repair and reconstruction after fire or other casualty. The Board of Directors may vote not to repair or replace any portion of the base building or Common Elements if the Condominium is terminated, or it repair or replacement would be illegal under any applicable law or if the Unit Owners vote not to repair or rebuild.

Article 11. Miscellaneous. Article 11 contains various miscellaneous provisions within the Declaration. Of significance, are the following Sections:

Section 11.7 states that the Declaration may be amended or terminated only with the express written consent of all members of the Board of Directors.

Section 11.14 provides that if unanimous consent or agreement of all the Unit Owners or members of the Board of Directors is required and is not forthcoming, then the parties may submit the issue, dispute or disagreement to binding arbitration to break the deadlock. In

addition, if there is any dispute or disagreement by or among any of the Unit Owners and/or the Board of Directors, the matter shall be submitted to binding arbitration.

Section 11.15 provides that separate condominium regimes may be established within the Units. Note that for each Block (other than 3B) each Residential Unit will be subjected to a separate sub-condominium regime by RTS.

Section 11.16 states that where the Board's or any Unit Owner's approval or consent is required under the Condominium Documents, such approval or consent shall be in writing and such approval or consent will not be unreasonably withheld, delayed or conditioned.

Section 11.17 states that where under the Condominium Documents, the Board of a Unit Owner is entitled to exercise its rights or performance obligations in its sole and absolute discretion, then the Board of any Unit Owner shall exercise such right in good faith and fair dealing.

#### Exhibits.

Exhibit A is a legal description of the entire Property.

Exhibit B consists of the Bylaws for the Condominium.

Exhibit C consists of 8 ½ x 11 copies of the Condominium Plat.

Exhibit D sets forth each Unit Owner's Percentage Interest in the General Common Elements, general Common Expenses and the vote in the Council of Unit Owner. The Residential Unit and the Commercial Unit each have a 33% Percentage Interest. The Parking Unit Owner's Percentage Interest is 34% (for rounding purposes). Each Unit has one (1) vote in the Council of Unit Owners.

Exhibit E will consist of a schedule of alternative percentage allocations for special maintenance items and special maintenance expenses. These alternative percentage allocations will be different from the percentage allocations set forth on Exhibit D otherwise held by each Unit Owner.

#### **IV. Summary of the Bylaws.**

Article 1. Provisions. Article 1 sets forth the general provisions of the Bylaws affirming that a Condominium has been established by subjecting the Property to a Condominium regime pursuant to the Act.

Article 2. Council of Unit Owners. Pursuant to Article 2 of the Bylaws, the Council of Unit Owners will be an unincorporated entity. All Unit Owners within the Condominium are members.

Pursuant to Article 2, the powers and duties of the Council of Unit Owners includes establishing methods for collecting assessments and charges for Common Expenses and arranging for the management of the Common Elements. The responsibilities of the Council of Unit Owners shall be exercised exclusively by the Board of Directors for the Council of Unit Owners.

Section 2.2 of Article 2 provides that meetings of the Council of Unit Owners shall be held only as determined from time to time by the Board of Directors.

Section 2.4 of Article 2 provides that the Board of Directors shall notify all Unit Owners of any meeting of the Council of Unit Owners at least ten days but not more than 90 days prior to such meeting.

Section 2.5 of Article 2 provides that the presence in person or proxy of all Unit Owners shall be required to constitute a quorum at all meetings of the Council of Unit Owners.

Section 2.7 of Article 2 provides that voting at all meetings of the Council of Unit Owners shall be based upon one (1) vote per Unit. It also provides that, except as otherwise provided in the Condominium Documents, a unanimous vote of all Unit Owners is required to adopt decisions at any meeting of the Council of Unit Owners.

Section 2.7(c) of Article 2 provides that no Unit Owner may vote at a meeting if the Unit Owner remains more than 60 delinquent in the payment of bona fide financial obligations to the Council of Unit Owners.

Section 2.8 of Article 2 provides that a vote by a Unit Owner at a meeting of the Council of Unit Owners may be cast in person or by proxy.

### Article 3 Board of Directors.

Section 3.1 provides for the powers and duties of the Board of Directors for the Council of Unit Owners. The powers and duties that may be exercised for the Board of Directors includes:

- Prepare and adopt the annual budget for the Condominium.
- Assess Unit Owners to defray the costs and expenses related to maintenance and operation of Common Elements and establish the means and methods of collecting assessments from the Unit Owners.
- Provide for the operation, care, repair, upkeep, replacement and maintenance of Common Elements and any other portions of the Condominium for which the Council of Unit Owners is responsible.
- Designate, hire, dismiss the personnel necessary for the operation, care, repair , upkeep, replacement and maintenance of the Common Elements, and any other portion of the Condominium that the Council of Unit Owners is responsible.
- Collect annual assessments and special maintenance expenses from the Unit Owners.
- Adopt and amend rules and regulations for the Condominium.
- Open bank accounts on behalf of the Council of Unit Owners and designate the signatories.

- Enforce, by legal means, the provisions of the Condominium Documents.
- Obtain and carry insurance against casualties and liabilities.
- Pay the cost of all services approved by the Board of Directors that are rendered on behalf of the Council of Unit Owners.
- Keep all books and records with detail accounts affecting the Common Elements and administration of the Common Elements specifying the expenses for maintenance, repair, replacement of Common Elements and any other expenses incurred that are the responsibility of the Council of Unit Owners. The books, accounts, records kept by the Council of Unit Owners may be audited by Unit Owners, their attorneys, accountants, mortgagees and authorized agents.
- Notify mortgagees of a Unit of any material default under the Condominium Documents by a Unit Owner.
- Borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep, repair, replacement and maintenance of the Common Elements, and other areas of the Condominium for which the Council of Unit Owners is responsible.
- Grant and accept easements and licenses through or over the General Common Elements.
- Sue and be sued, complain and defend., settle claims or intervene in litigation, arbitration, mediation or any other form of action or suit on behalf of the Council of Unit Owners.
- Exercise for the Council of Unit Owners all powers, duties and authority vested or delegated to the Council of Unit Owners pursuant to the act and the Condominium Documents.

Section 3.2 of the Bylaws provides that there shall be three (3) members to the Board of Directors; one director shall be appointed by the commercial Unit Owner; one director shall be appointed by the Residential Unit Owner; and, one director shall be appointed by the Parking Unit Owner. Except as may otherwise be provided in the Condominium Documents, all actions by the Board of Directors shall require the unanimous consent of all directors.

Section 3.3 of the Bylaws provides that no Unit Owner shall be appointed as a director or continue to serve as a director if the Unit Owner remains more than 60 days delinquent in the payment of bona fide financial obligations to the Council of Unit Owners.

Section 3.4 of the Bylaws provides that a director shall serve until such director's death, incapacity, removal or resignation. A director may resign at any time by giving written notice to the president or secretary of the Council of Unit Owners.

Section 3.6 of the Bylaws provides that regular meetings of the Board of Directors will be held at such time and place as shall be determined, time by time, by a majority of the Board of Directors, but not less than once per year. Special meetings of the Board of Directors may be called by president on three business days notice. At all meetings of the Board of Directors,

attendance by all directors shall be required to constitute a quorum for the transaction of business.

Section 3.8 of the Bylaws provides no directors shall receive any compensation from the Condominium for acting as a director.

Section 3.9 of the Bylaws provides that the Board of Directors shall have the power to act as agent for the Unit Owners of all the Units and for each of them to manage, control and deal with the interest of each Unit Owner in the Common Elements of the Condominium in order to permit the Board of Directors to fulfill all of its powers, obligations, rights, functions and duties.

Section 3.10 of the Bylaws provides that the directors, officers and committee members of the Condominium shall not be liable to the Unit Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct, gross negligence or willful breach of a fiduciary duty.

Section 3.12 of the Bylaws provides that the Board of Directors may select, retain and terminate the services of a Condominium managing agent. The initial Condominium managing agent shall be FRIT or any of its affiliates. Any management fee paid to the Condominium managing shall not exceed the fee charged for similar services provided by management companies from comparable facilities in the Washington, D.C. Metropolitan Area. The Condominium managing agent shall perform such duties and services as the Board of Directors shall direct from time to time.

#### Article 4. Officers of the Council of Unit Owners.

Section 4.14 of the Bylaws provides that the officers of the Council of Unit Owners shall be a president, vice president, a secretary and a treasurer. The officers are to be elected by the Board of Directors. The president and vice president shall at all times be members of the Board of Directors.

Section 4.2 of the Bylaws provides that the election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Council of Unit Owners.

Section 4.3 of the Bylaws provides that each officer of the Council of Unit Owners shall hold office for one (1) year.

Section 4.4 of the Bylaws provides that the president shall at all times be a director. Each year, the office of president shall alternate among the director appointed by the Unit Owner of the Residential Unit, the director appointed by the Unit Owner of the commercial Unit, and the director appointed by the Unit Owner of the Parking Unit. The first president of the Board shall be a director appointed by Unit Owner of the Residential Unit.

Section 4.10 of the Bylaws provides that no officer shall receive compensation for any service rendered to any service rendered to the Council of Unit Owners. However, officers may be reimbursed for actual out-of-pocket expenses incurred in the performance of their official duties.

Section 4.11 of the Bylaws provides that agreements, contracts, deeds, leases, checks and other instruments of the Council of Unit Owners for expenditures or obligations in excess of \$2,000, and all checks drawn upon reserve accounts shall be executed any two persons designated by the Board of Directors. Any such instruments for expenditures of \$2,000 or less may be executed by any one person designated by the Board of Directors.

#### Article 5. Operation of the Condominium.

The fiscal year of the Council of Unit Owners shall be January 1 through December 31.

Section 5.1(b) of the Bylaws provides that the annual budget for the Condominium shall be prepared at least 45 days before the beginning of each fiscal year by the Board of Directors and submitted to the Unit Owners.

The budget shall contain an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Condominium that are the responsibility of the Council of Unit Owners to maintain, repair and replace pursuant to the Condominium Documents. The total amount of the estimated funds required from assessments shall be assessed against each Unit Owner in proportion to such Unit Owner's respective Percentage Interest and shall be due and payable monthly.

Any expenses incurred by the Council of Unit Owners at the request of a Unit Owner directly related to the maintenance, management, operation, repair and replacement of such Unit Owner's Unit shall be assessed against the Unit Owner's Unit or a lien filed against such Owner's Unit.

Within 90 days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners and to each mortgagee an itemized accounting of the General Common Expenses for the fiscal year actually incurred and paid with a tabulation of the amounts collected pursuant to the budget adopted by the Board for the fiscal year. Any payments for General Common Expenses accumulated in excess of the amount required for actual General Common Expenses and reserves shall be placed in a reserve account or credited according to each Unit Owner's Percentage Interest to the next periodic installment due from Unit Owners, or distributed to Unit Owners according to their Percentage Interest. Any net shortage shall be assessed promptly against the Unit Owners in accordance with the respective Percentage Interest and it will be payable in a lump sum or in installments as the Board may determine.

Section 5.1(d) of the Bylaws provides that the Board may also allocate an alternative percentage allocation for special maintenance expenses associated with the operation, maintenance, repair and replacement of portions of the Property described on Exhibit D to the Declaration, Reserve General Common Elements or as otherwise determined by the Board. Such items shall be such

special maintenance items and expenses shall be assessed against each Unit Owner in proportion to each Unit Owner's alternative percentage allocation, and shall be payable monthly, just as assessments.

Section 5.1(e) of the Bylaws provides that the Boards may build up and maintain reserves for the operations and replacements of the Common Elements and other property required to be maintained by the Council of Unit Owners.

Section 5.2 provides that a Unit Owners' voting rights may be suspended upon failure of a Unit Owner to pay Condominium assessments when due.

Section 5.3 of the Bylaws provides that utilities serving the Units shall be separately metered and billed to the respective Unit Owners. The cost for utilities serving the Common Elements shall be a General Common Expense.

Section 5.4 of the Bylaws provides that the Board shall take prompt action to collect any Condominium assessments due from any Unit remained unpaid for more than the applicable cure period, (i.e., 15 days). A lien for such unpaid assessments may be enforced and foreclosed as provided in the Act and the Maryland Contract Lien Act. Unpaid assessments shall bear interest at the maximum rate permitted by applicable law, not to exceed 5 percentage points above the floating prime rate of interest set forth from time to time in the money rate section of the Wall Street Journal. In addition, the Board may impose late charges not to exceed 5% of the past due assessment.

Section 5.6 of the Bylaws provides for maintenance, repair, replacement and other general expenses by the Council of Unit Owners. The Council of Unit Owners shall be responsible for the operation, maintenance, repair and replacement of the Common Elements and for any portion of the Condominium required to be maintained by the Council of Unit Owners pursuant to the Condominium Documents. Any Owner of a Unit to which a Limited Common Element is appurtenant or any Unit Owner who has benefited by a Reserve General Common Element and has been granted a revocable license for the use of the Reserve General Common Element shall have the responsibility for the routine operation, maintenance, repair and replacement of those areas and the cost associated therewith.

Section 5.7 of the Bylaws provides that each Unit Owner shall maintain, repair and replace its Unit consistent with a first class quality of the Condominium and any other improvements within the Rockville Town Square project. "First Class" is defined in the Condominium Documents as a quality, condition, nature, operation that is consistent with the initial construction and comparable to the quality, condition, nature, operation found in other mixed-use developments in the Washington, DC Metropolitan Area of comparable age, quality and construction to the Property, considering normal wear and tear over the life of the improvements, and includes inspection, testing, care, maintenance, operation, repair, alteration, additions, improvements, remodeling, restoration, renovation and replacement of the exterior of a Unit in accordance with the standards and requirements set forth in the Declaration and the rules.



## Article 6. Mortgages.

Section 6.1 of the Bylaws provides that each Unit Owner may mortgage, encumber or otherwise grant a security interest in its Unit. The Unit Owner must notify the Board of Directors of the name and address of any mortgagee. The Board of Directors, when giving a notice to any Unit Owner of a default in payment of an assessment or other default which remains uncured, shall simultaneously send a copy of such notice to the mortgagee of such Unit. The Board of Directors shall also give notice of all mortgagees of any material changes to the Condominium Documents or any other notices reasonably required by a mortgagee. The Council of Unit Owners cannot do the following without the unanimous consent of mortgagees: change any Unit's Percentage Interest, except as provided in the act; partition, subdivide, abandon or encumber, sell or transfer the Common Elements of the Condominium (except for the granting of easements pursuant to the act and the Condominium Documents); except following destruction or condemnation, terminate the Condominium; modify the method of determining or collecting assessments; use insurance proceeds for losses to the Condominium for any purpose other than repair; or make any amendment or modification to the Condominium Documents impairing or affecting the rights, priorities or remedies of a mortgagee. If a mortgagee is notified of any proposed amendment to the Condominium Documents and the mortgagee fails to respond within 30 days of receipt of such notice, then such mortgagee shall be conclusively deemed to have approved the proposed amendment or other matter for which the mortgagee was providing notice.

## Article 7. Compliance and Default.

Section 7.1 of the Bylaws provides that each Unit Owner shall be governed by and shall comply with the Act and the Condominium Documents. In addition, each Unit Owner shall be liable to the Council of Unit Owners and to each other, as the case may be, for the expense of all maintenance, repair or replacement rendered necessary by its acts or omissions, and those of its tenants, subtenants, and invitees, licensees, employees, contractors and agents. In any proceedings arising out of any alleged default by a Unit Owner, the Council of Unit Owners shall be entitled to recover the cost of such proceedings and such reasonable attorney's fees.

Section 7.2(c)(i) of the Bylaws provides that with respect to non-monetary violations, the non-defaulting Unit Owner or Board of Directors, as the case may be, may enter a Unit or Limited Common Element appurtenant to such Unit where a breach may exist and abate and remove at the expense of the defaulting Unit Owner, any structure, thing or condition that may be in violation of the Condominium Documents. Before exercising such right, the defaulting Unit Owner shall be provided with notice and an opportunity to cure the default within 20 days after receipt of such notice. The exception is in the case of emergency situations where notice is not required.

Section 7.2( c)(ii) of the Bylaws provides that a defaulting Unit Owner shall cure a monetary default within 15, days after written notice of such default. If the default remains uncured beyond the 15-day cure period, then the party entitled to performance of the monetary obligation shall be entitled to a lien against the defaulting Unit Owner's Unit.

Section 7.3 of the Bylaws provides that the total annual assessment of each Unit Owner for General Common Expenses, special maintenances and any special assessments will be declared to be a lien levied against the Unit of each Unit Owner as provided in the Maryland Condominium Act.

Article 8. Amendments to Bylaws. Article 8 provides that the Bylaws may be modified or amended only by the unanimous express written consent of the Unit Owners.

Article 9. Miscellaneous. – Article 9 provides for miscellaneous provisions to the Declaration. Note that the Bylaws will be attached to the Declaration as Exhibit B and will be recorded when the Declaration is recorded.

#### **IV. Summary of the Rules and Regulations.**

1. Parking. The Parking Unit Owner shall keep the Parking Unit open 24 days a day, seven days a week, 365 days per year for parking use by the Parking Beneficiaries. The Parking Unit Owner shall cause the Parking Unit to be maintained in a good and workmanlike manner in accordance with applicable law and the maintenance standards attached as Exhibit A to the Rules.

No cleaning, maintenance, or repair activities within the Parking Unit that would generate noise or vibration which would interfere with the safety, comfort or convenience of any occupant of any other Unit shall occur between the hours of 11 pm and 6 am. Routine cleaning of the Parking Unit shall be performed between the hours of 6 am and 11 pm.

For Blocks 1 and 2, the parking garage shall contain the parking garage operated by the City of Rockville as well as the residential parking facility to be owned and operated by RTS.

For Blocks 1 and 2, if at any time, the Residential Unit Owner shall determine that a condition exists within the parking that affects access to or from the residential parking facility, and such condition requires immediate maintenance or repair, then the residential Unit Owner, after giving notice to the Parking Unit Owner, shall have the right to immediately perform such maintenance and/or repair at the expense of the Parking unit Owner.

The Parking Unit Owner shall undertake commercially reasonable efforts to discourage loitering about the Parking Unit.

2. Loading and Delivery. Unit Owners shall permit deliveries, loading, and unloading of merchandise only during the hours of 7 am to 10 pm. For Blocks 1 and 2, however, such limitations shall not apply to the grocery store tenant. Also for Blocks 1 and 2, with respect to the loading dock located on Block 1, the loading dock doors will remain closed at all times except during deliveries. All deliveries shall be supervised by the Unit Owner accepting such delivery. Violators shall be subject to a fine that may be imposed by the City in the exercise of the City's police powers, which is anticipated to be approximately \$100 per violation.

3. Use of Outdoor Areas. The Commercial Unit Owner may permit any restaurant operator to use sidewalk space adjoining or within any such restaurant or café sidewalk areas as an outdoor dining area. The Commercial Unit Owner shall have priority over any other Unit Owner to use such sidewalk areas for an outdoor dining area. Outdoor dining shall be permitted during the hours of 7 am to 12 a.m. of the next day on Sundays through Wednesdays, and during the hours of 7 am until 2 am of the next day on Thursdays, Fridays, Saturdays and holidays and evenings prior to holidays. When the Commercial Unit Owner is using the outdoor dining area, then the responsibility for the maintenance, cleaning and repair and the cost for same shall be that of the Commercial Unit Owner. If the outdoor dining area is not used by the Commercial Unit Owner, then the routine maintenance and operation and the cost for same shall be a general common expense shared by all Unit Owners. In addition, the Commercial Unit Owner may place chairs, tables and benches within the outdoor areas for use by guests and invitees and other permittees.

Section 3.3 of the Rules provides that the Commercial Unit Owner may use, on a periodic basis, the public outdoor areas, for special activities and events so long as such activities and events are conducted in a safe and orderly manner and are in compliance with all applicable laws.

Section 3.4 of the Rules provides that the Commercial Unit Owner has the right to permit eight (8) permanent kiosks and two (2) movable kiosks or carts within the entire project for the sale of goods and services. The residential Unit Owner has the right to use one of the kiosks or carts for the distribution of information regarding the rental or sales of residential Units within the Property.

4. Hours of Operation, Construction Activities, Maintenance, Appearance and Refuse. Each Unit Owner is responsible for its trash disposal. Signage is subject to applicable laws. The approved signage criteria will be attached to the Rules as Exhibit C. No exterior work or construction activities will occur during the periods of November 1 through January 15 if the work would be disruptive to the Commercial Unit.

5. Noise, Odors and Lighting. Each Unit Owner agrees to keep its mechanical and other apparatus located within its Units free from vibration and noise that may be transmitted beyond the improvements located on such Unit. No Unit Owner shall cause or permit obnoxious food odors or other objectionable odors to emanate from its respective Unit. Each Unit Owner agrees to abide by the lighting plan submitted to the City of Rockville and the lighting criteria that been or shall be jointly prepared by the Unit Owners.

6.5. Enforcement, Modification and Amendment of the Rules. The Rules are part of the Condominium Documents and are enforceable just as the Condominium Documents. The Unit Owners, Council of Unit Owners and the Board of Directors have all remedies and recourse to enforce the Rules as set forth in the Declaration for the enforcement of the Condominium Documents. The Rules cannot be terminated, canceled, changed or amended without the written consent or approval of each Unit Owner affected by the termination, cancellation, change or amendment to any Rule. The Rules will not be recorded in the Land Records.

Exhibits.

Exhibit A-Parking Unit Maintenance, Cleaning and Inspection Specifications

Exhibit B-Outdoor Area

Exhibit C-Sign Criteria

[End of Executive Summary]

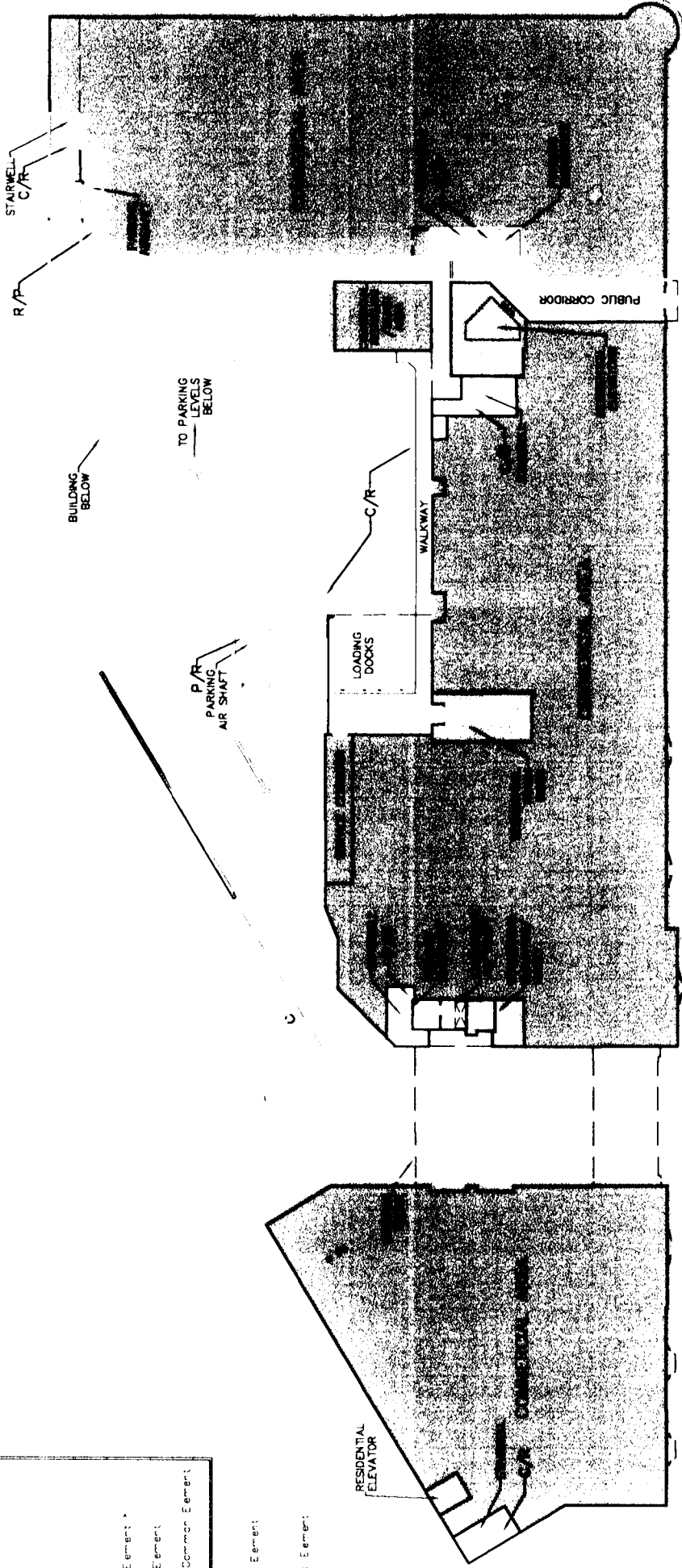
GENERAL NOTES

1. Horizontal and Vertical Datum based on Maryland State Plane NAD83/84 datum.
2. The Common Elements:
  - a. The Common Elements consist of all the Condominium Property and improvements therein which are not part of any Condominium Unit.
  - b. The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
  - c. The Limited Common Elements designated (LCE) herein are as set forth in the Declaration and as shown hereon.
  - d. The General Common Elements designated (GCE) herein are comprised of all the areas and facilities which are not a part of a Unit or Limited Common Element as shown hereon as set forth in the Declaration.
3. The pricing of this property is for condominium selling purposes. This condominium project does not intend to be sold as the property and separate structures for C/O.

LEGEND	
	Commercial Unit
	Residential Unit
	Parking Unit
	Limited Common Element
	General Common Element
	Reserved General Common Element

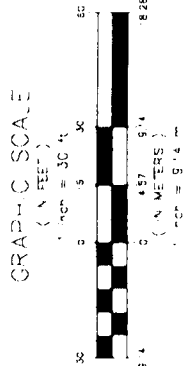
LEGEND NOTES

- \* P/R = Parking and Residential Element
- \* C/R = Commercial Element
- \* P/C = Parking and Commercial Element



NORTH MARYLAND AVENUE

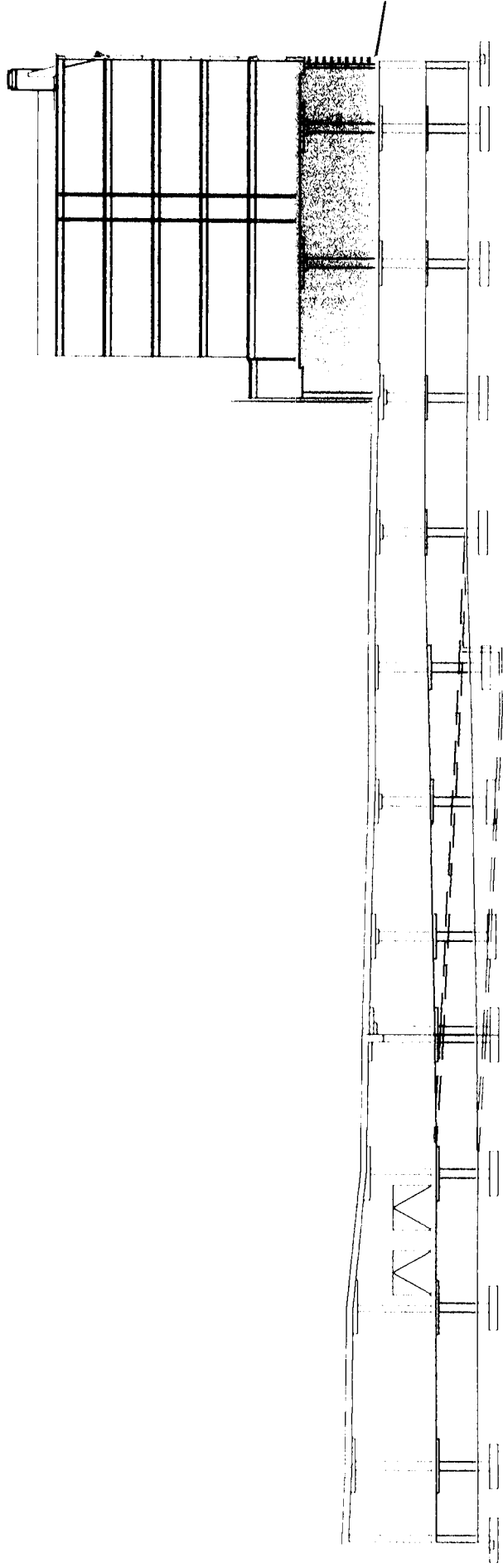
EXHIBIT  
FIRST FLOOR ~ BLOCK 5  
ROCKVILLE TOWN SQUARE  
CITY CENTER, LOT 23, BLOCK B  
ELECTION DISTRICT No. 4  
CITY of ROCKVILLE, MARYLAND  
SCALE: 1" = 30' JANUARY, 2005



**MHG** Macris, Hendricks & Glascock, P.A.  
Engineers & Planners  
Landscape Architects & Surveyors  
5220 W. Glendale Road, Suite 120  
Rockville, Maryland 20855-2718  
Phone: 301.582.0610  
Fax: 301.542.0551  
www.mhgpa.com

GENERAL NOTES

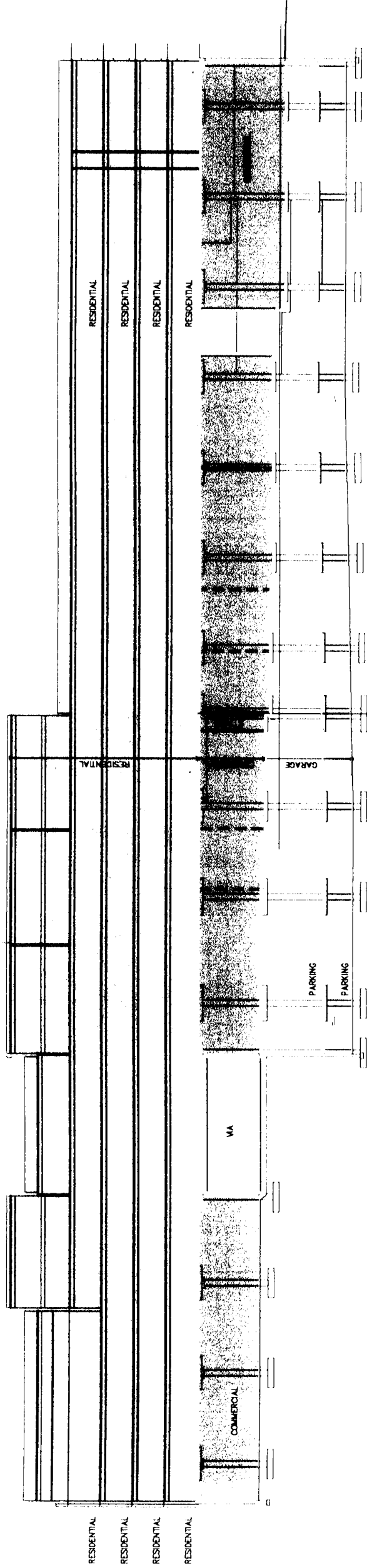
- Horizontal and Vertical Datum based on Maryland State Plane NAD83/S datum
- The Common Elements
- The Common Elements are defined as the Condominium property and improvements therein which are not part of any Condominium Unit
- The Common Elements are defined as the limited Common Elements and the General Common Elements as set forth in the Declaration
- The limited Common Elements designated (LCE) herein are as set forth in the Declaration and as shown therein
- The General Common Elements designated (GCE) herein are all other parts of the project which are not a limited Common Element or as shown herein or as set forth in the Declaration
- The creation of this property is for condominium selling purposes only. This condominium does not exist to subdivide the property into separate subdivisions.



SECTION 2. LOOKING EAST TO HUNGERFORD DRIVE



BLDG. #4 BLDG. #5



SECTION 1. LOOKING EAST TO HUNGERFORD DRIVE

EXHIBIT

SECTIONS ~ BLOCK 5  
ROCKVILLE TOWN SQUARE  
CITY CENTER, LOT 23, BLOCK B  
ELECTION DISTRICT No. 4  
CITY of ROCKVILLE, MARYLAND  
SCALE: NTS JANUARY, 2005

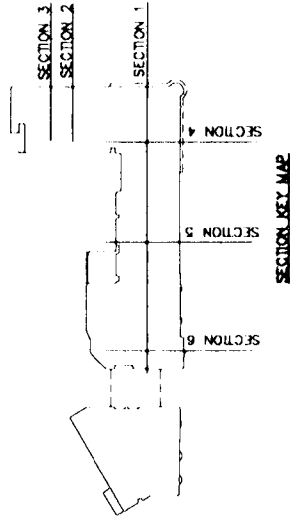
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SHT 2 OF 2  
97.397.05

LEGEND	
Commercial Unit	• P/A = Parking and Residential Element
Residential Unit	• C/A = Commercial Element
Parking Unit	• P/C = Parking and Commercial Element
Limited Common Element	
General Common Element	
Reserved General Common Element	

LEGEND NOTES

- P/A = Parking and Residential Element
- C/A = Commercial Element
- P/C = Parking and Commercial Element



SECTION KEY MAP

**DECLARATION  
FOR  
ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM**

**DECLARATION  
FOR  
ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM**



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## EXHIBITS

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Exhibit "B"	Bylaws of the Condominium
Exhibit "C"	Condominium Plats
Exhibit "D"	Schedule of Percentage Interests and Votes
Exhibit "E"	Schedule of Alternative Percentage Allocations, Special Maintenance Items and Special Maintenance Expenses

## Declaration for

### Rockville Town Square Block 5 Condominium

THIS DECLARATION FOR ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM (the "**Declaration**") is made this \_\_\_\_ day of \_\_\_\_\_, 2005 by RTS RESIDENTIAL BLOCK 5, LLC, a Delaware limited liability company ("**Declarant**"), as follows:

## RECITALS

**A.** Declarant is the owner of the fee simple interest in certain land, and all easements, rights and appurtenances belonging thereto located in Montgomery County, Maryland, and more particularly described in Exhibit "A" to this Declaration. The land described on Exhibit "A" and all easements, rights and appurtenances belonging thereto, together with all improvements now or hereafter erected thereon are hereinafter collectively referred to as the "**Property**."

**B.** Declarant desires to subject the Property to a condominium regime pursuant to Title 11 of the Real Property Article of the Annotated Code of Maryland in effect as of the date hereof, as amended.

**C.** Prior to the recordation of this Declaration among the Land Records, there has been filed for record among the Land Records certain condominium plats entitled "Rockville Town Square Block 5 Condominium" (hereinafter referred to as the "**Condominium Plats**"), which Condominium Plats (consisting of \_\_\_\_\_ (\_\_\_\_) sheets) are recorded among the Land Records at Plat Nos. \_\_\_\_\_ and \_\_\_\_\_. A reduced copy of the Condominium Plats is attached as Exhibit "C" to this Declaration.

NOW, THEREFORE, Declarant hereby subjects the Property to the provisions of the Maryland Condominium Act and this Declaration.

## ARTICLE 1 DEFINITIONS

Unless the context shall plainly require otherwise, the following terms when used in this Declaration and any of the exhibits attached to this Declaration shall have the following meanings.

**Section 1.1.** "*Alternative Percentage Allocation*" is defined in Section 3.8 of this Declaration.

**Section 1.2.** "*Annual Assessment*" means the share of the anticipated General Common Expenses and Special Maintenance Expenses allocable to a Unit for each fiscal year of the Council of Unit Owners, as reflected in the budget for that year.

**Section 1.3.** "*Applicable Law*" means all laws, rules, statutes, codes, acts, ordinances, judgments, decrees, injunctions, permits, licenses, authorizations, directives, requirements or

regulations of all federal, state, county, city and other governments, departments, commissions, boards, courts, authorities, officials, and offices applicable to the Property, the Condominium, the Units, the Council of Unit Owners, the Condominium Documents, and any Unit Owner.

**Section 1.4. “Base Building”** is defined in Section 9.1(a)(i) of this Declaration.

**Section 1.5. “Benefited Owner”** is defined in Section 3.5 of this Declaration.

**Section 1.6. “Board of Directors” or “Board”** means the administrative body elected in accordance with the Bylaws to act for the Council of Unit Owners in governing the Condominium.

**Section 1.7. “Building” or “Buildings”** means the Buildings shown on the Condominium Plats, including the improvements constructed or to be constructed within each Unit now or hereafter.

**Section 1.8. “Burdened Owner”** is defined in Section 3.6 of this Declaration.

**Section 1.9. “Bylaws”** means the Bylaws attached to this Declaration as Exhibit “B”, as such Bylaws may be amended from time to time in accordance with the terms of the Bylaws.

**Section 1.10. “Commercial Unit”** means the Unit designated as such on the Condominium Plats.

**Section 1.11. “Common Elements”** means all of the Property other than the Units, and includes the General Common Elements and the Limited Common Elements.

**Section 1.12. “Common Profits”** means any profits realized by the Council of Unit Owners.

**Section 1.13. “Condominium”** means the condominium regime created by the recordation of this Declaration, the Bylaws, and the Condominium Plats, as each of the same may be amended from time to time.

**Section 1.14. “Condominium Documents”** means collectively, this Declaration, the Bylaws, the Condominium Plats, and the Rules (whether or not such Rules are recorded in the Land Records), as each of the same may be amended from time to time.

**Section 1.15. “Condominium Managing Agent”** means a professional managing agent employed by the Council of Unit Owners to perform such duties and services as the Board of Directors shall authorize in conformance with the Maryland Condominium Act, this Declaration, and the Bylaws.

**Section 1.16. “Condominium Plats”** means the plats referred to in Recital C of this Declaration, as such plats may be amended from time to time in accordance with the terms of the Condominium Documents.

**Section 1.17. "Council of Unit Owners"** means the legal entity comprised of all Unit Owners that governs the Condominium pursuant to the Condominium Documents and the Maryland Condominium Act.

**Section 1.18. "County"** means Montgomery County, Maryland.

**Section 1.19. "Declaration"** means this document and all exhibits attached hereto, as the same may be amended from time to time in accordance with the terms hereof.

**Section 1.20. "Director"** means any person appointed to the Board of Directors in accordance with the Bylaws.

**Section 1.21. "First Class"** means a quality, condition, nature or operation that is consistent with the initial construction and comparable to the quality, condition, nature or operation found in other mixed-use developments in the Washington, D.C. metropolitan area of comparable age, quality and construction to the Property, considering normal wear and tear over the life of the improvements, and includes inspection, testing, care, maintenance, operation, repair, alteration, additions, improvements, remodeling, restoration, renovation and replacement of the exterior of a Unit in accordance with the standards and requirements set forth in this Declaration and the Rules. Subject to the Rules and the provisions of Article 8 of this Declaration, "First Class" is not intended to apply to the quality of tenants, tenant mix, tenant selection or leasing program for the Commercial Unit or Residential Unit, nor is "First Class" intended to apply to the Parking Unit nor does it apply to the aesthetic or cosmetic components of the interior of a Unit.

**Section 1.22. "General Common Elements"** is defined in Section 2.5(b) of this Declaration.

**Section 1.23. "General Common Expenses"** means any expenses associated with (i) the maintenance, operation, inspection, administration, repair, or replacement of the General Common Elements, except to the extent specifically provided otherwise in this Declaration or the Bylaws, (ii) any insurance premiums payable with respect to insurance required to be carried by the Council of Unit Owners pursuant to Section 9.1(a) of this Declaration, and (iii) any amounts described as General Common Expenses in Section 10.3(d) of this Declaration. The General Common Expenses shall also include all reasonable expenses designated as such in the budget adopted annually by the Board of Directors in accordance with Section 5.1 of the Bylaws. Special Maintenance Expenses, as described in Section 3.8 of this Declaration, are not General Common Expenses. The Board of Directors shall allocate among the Unit Owners any expenses paid by or on behalf of the Council of Unit Owners that are neither General Common Expenses nor Special Maintenance Expenses.

**Section 1.24. "Improvements and Betterments"** is defined in Section 9.1(a)(i) of this Declaration.

**Section 1.25. "Indemnatee"** is defined in Article 7 of this Declaration.

**Section 1.26. "Indemnitor"** is defined in Article 7 of this Declaration.

**Section 1.27. "Insurance Trustee"** means the Mortgagee of the Residential Unit, or if there is no Mortgagee of the Residential Unit or if the Mortgagee of the Residential Unit declines to act as the Insurance Trustee, then a bank, insurance company, union, pension trust, profit or retirement fund, Real Estate Investment Trust, or similar institutional lender with substantial construction experience selected with the consent of all members of the Board of Directors, to be the loss payee of the proceeds of the insurance described in Sections 9.1(a)(i), (iv) and (v) of this Declaration.

**Section 1.28. "Land Records"** means the Land Records of Montgomery County, Maryland.

**Section 1.29. "License Agreement"** is defined in Section 2.1 of this Declaration.

**Section 1.30. "Limited Common Elements"** is defined in Section 2.5(d) of this Declaration.

**Section 1.31. "Maryland Condominium Act"** means and refers to Title 11 of the Real Property Article of the Annotated Code of Maryland in effect as of the date hereof, as the same has been or may be amended from time to time.

**Section 1.32. "Mortgage"** means any deed of trust, mortgage, and other security instrument recorded among the Land Records constituting a lien against all or any portion of a Unit.

**Section 1.33. "Mortgagee"** means the holder of or beneficiary under a Mortgage.

**Section 1.34. "Notice to Proceed"** is defined in Section 11.14(a) of this Declaration.

**Section 1.35. "Officer"** means any person holding office in the Council of Unit Owners pursuant to Article 4 of the Bylaws.

**Section 1.36. "Parking Beneficiaries"** is defined in Section 8.2(a) of this Declaration.

**Section 1.37. "Parking Unit"** means the Unit designated as such on the Condominium Plats.

**Section 1.38. "Percentage Interest"** means the undivided percentage ownership interest appurtenant to each Unit with respect to the General Common Elements and the Common Profits, and also represents the Unit Owner's percentage liability for General Common Expenses (other than Special Maintenance Expenses), as set forth in Exhibit "D" to this Declaration.

**Section 1.39. "Performing Party"** is defined in Section 11.13 of this Declaration.

**Section 1.40. "President"** means the President of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

**Section 1.41. "Project"** means the Rockville Town Square project in Rockville, Maryland.



**Section 1.42. "Property"** is defined in Recital A of this Declaration.

**Section 1.43. "Reserved General Common Elements"** is defined in Section 2.5(c).

**Section 1.44. "Restricted Areas"** is defined in Section 3.2(b) of this Declaration.

**Section 1.45. "Residential Parking Facility"** means that portion of the Residential Unit which is identified on the Condominium Plats as parking level 2B of the parking improvements located within the Property.

**Section 1.46. "Residential Unit"** means the Unit designated as such on the Condominium Plats.

**Section 1.47. "Rules"** means such reasonable rules and regulations adopted and amended from time to time by the Board of Directors, in accordance with Section 4.1 of this Declaration and Section 3.1(f) of the Bylaws, to govern the use and operation of the Condominium and that are consistent with the Maryland Condominium Act, this Declaration, and the Bylaws.

**Section 1.48. "Second Notice"** is defined in Section 11.14(b) of this Declaration.

**Section 1.49. "Secretary"** means the Secretary of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

**Section 1.50. "Security System"** is defined in Article 6 of this Declaration.

**Section 1.51. "Special Assessment"** means the share of any General Common Expenses allocable to a Unit that is in addition to the Annual Assessment, including, but not limited to, those imposed pursuant to Section 7.3 of the Bylaws.

**Section 1.52. "Special Maintenance Expenses"** is defined in Section 3.8 of this Declaration.

**Section 1.53. "Special Maintenance Items"** is defined in Section 3.8 of this Declaration.

**Section 1.54. "Sub-Condominium"** is defined in Section 11.15(a) of this Declaration.

**Section 1.55. "Sub-Unit"** is defined in Section 11.15(b) of this Declaration.

**Section 1.56. "Taxes"** is defined in Section 11.4 of this Declaration.

**Section 1.57. "Treasurer"** means the Treasurer of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

**Section 1.58. "Unit"** means the three dimensional contiguous or non-contiguous areas, as described in this Declaration and as shown on the Condominium Plats, and includes all improvements contained or to be contained within such areas unless designated in this Declaration or on the Condominium Plats as a General Common Element or Limited Common

Element. The term "Unit" shall mean the Commercial Unit, Residential Unit and Parking Unit, as the context may require.

**Section 1.59. "Unit Owner"** or "Owner" means any natural person, group of persons, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination of such entities, legally capable of holding title to real property, that owns fee simple title to a Unit; *provided, however*, that any person, group of persons, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination of such entities, that holds such an interest solely as security for the performance of an obligation shall not be a Unit Owner solely by reason of that interest.

**Section 1.60. "Vice President"** means the Vice President of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

## **ARTICLE 2**

### **CREATION OF THE CONDOMINIUM REGIME**

**Section 2.1. Name of Condominium.** This condominium shall be known as "**Rockville Town Square Block 5 Condominium.**" The name of the condominium may be used by all Unit Owners in connection with the use, operation and marketing of all or any portion of their respective Units subject to and in conformity with the terms of a certain license agreement that has been entered into among the Declarant, Federal Realty Investment Trust and the Mayor and Council of Rockville, Maryland, entitled "Trademarks License Agreement" and dated \_\_\_\_\_, 2005 (the "**License Agreement**"). None of the Unit Owners shall use the same or similar name for another project except in conformity with the terms of the License Agreement.

**Section 2.2. Submission of Property to the Maryland Condominium Act.**

(a) The Property is hereby subjected to, and shall hereafter be held, conveyed, divided, subdivided, leased, rented, occupied, improved, and encumbered in accordance with the Maryland Condominium Act and the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges, and liens set forth in this Declaration and the Bylaws, all of which are declared and agreed to be in aid of a plan for the division of the Property into a condominium pursuant to the Maryland Condominium Act. By the recordation of this Declaration among the Land Records and except as may be otherwise provided in this Declaration or the Bylaws (i) the Council of Unit Owners hereby assumes all responsibilities and duties imposed upon it by the Condominium Documents including all responsibility, and duty for the care, operation, repair, maintenance and, where required, replacement of the General Common Elements in accordance with the Condominium Documents and (ii) each Unit Owner hereby assumes all responsibilities and duties imposed upon it by the Condominium Documents including all responsibility and duty for the care, operation, repair, maintenance and, where required, replacement of its (a) respective Unit and (b) any Limited Common Element appurtenant thereto based upon its Alternative Percentage Allocation in accordance with the Condominium Documents, subject, however, to the rights and obligations the Council of Unit Owners may have pursuant to the Condominium Documents.

(b) All present and future Unit Owners shall, and shall use commercially reasonable efforts to cause their respective tenants, subtenants, licensees, employees, contractors and agents, to comply with the provisions of the Condominium Documents. The acceptance of a deed of conveyance or other acquisition of title to a Unit, the entering into of a lease, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be enforceable equitable servitudes and covenants running with the land and shall automatically bind any person or entity having at any time any right, title, interest or estate in such Unit, including, without limitation, all Unit Owners and Mortgagees, as though such provisions were recited and stipulated at length in each deed, lease or other instrument

**Section 2.3. Units; Dimensions of Units.** The dimensions of the Units are as shown on the Condominium Plats, as amended from time to time. The perimeter and vertical boundaries of each Unit shall include the exterior walls, windows, doors and other improvements and such vertical boundaries shall consist of the vertical planes extended to intersect with each other and with the upper and lower horizontal boundaries of the Unit, as indicated on the Condominium Plats to the extent possible. The upper and lower horizontal boundaries of each Unit shall be horizontal planes extended to intersect the vertical boundaries of the Unit, as indicated on the Condominium Plats. The elevations of such horizontal planes shall be as described on the Condominium Plats. It is anticipated that buildings and other improvements will be constructed on the Property after the recordation of this Declaration and the initial Condominium Plats. Each Unit Owner shall cooperate in the preparation and recordation of an amendment or amendments to the Condominium Plats and any other instruments as may be reasonably necessary to reflect changes in Unit boundaries and the Common Elements based on the as-built location of buildings and other improvements within the Property.

**Section 2.4. Units; Percentage Interests; Votes.** Attached to and made part of this Declaration as Exhibit "D" is a list of the Units, the Percentage Interest of each Unit in the Common Elements, General Common Expenses and Common Profits, and the vote appurtenant to each Unit.

**Section 2.5. Common Elements.**

(a) **Ownership of General Common Elements.** Each Unit Owner shall be the owner of an undivided interest as a tenant-in-common in the General Common Elements, in accordance with the Percentage Interest of each Unit Owner.

(b) **General Common Elements.** The "General Common Elements" consist of the following specific areas and structures:

(i) The Property except for the Units and any Limited Common Elements;

(ii) All areas, improvements, and facilities designated as General Common Elements on the Condominium Plats; and

(iii) Unless otherwise provided for in this Declaration, on the Condominium Plats or otherwise designated or defined as part of the Units or Limited Common Elements, the General Common Elements include, but are not limited to, (a) footings, foundations, columns, girders, beams and similar supports for the improvements benefiting all Units erected or to be erected within the Property, (b) the service areas for trash, transformers and deliveries, (c) all of the pipes, cables, flues, wiring, ducts, conduits, public utility lines and other apparatus relating to any water and air distribution, power, gas, light, telephone, telecommunication, sewer, plumbing, air conditioning, heating and utility systems serving all of the Units, (d) exterior walls and facings of the Buildings and any partitions separating Units, (e) stairwells and stairs, (f) elevators and elevator shafts, (h) mechanical and maintenance rooms, (g) entrance doors and windows, (h) central loading and delivery areas, and (i) all apparatus and installations existing or hereinafter constructed on the Property for the common use, maintenance or safety of the Property.

(c) **Reserved General Common Elements.** The Board of Directors shall have the power in its discretion from time to time to grant revocable licenses in designated General Common Elements to any Unit Owner(s) at no charge or to establish a reasonable charge and terms for the use and maintenance thereof by such Unit Owner(s) (which charge shall be deemed an assessment payable in accordance with the Section 5.1(c) of the Bylaws or Special Maintenance Expense payable in accordance with Section 5.1(d) of the Bylaws, as determined by the Board of Directors). Such use and maintenance shall be in accordance with Applicable Law and the Condominium Documents. The General Common Elements or portions thereof so designated shall be referred to as a **"Reserved General Common Elements."** By way of example, Reserved General Common Elements may include, but are not limited to, pop-out storefronts, Outdoor Dining Areas described in Section 3.2.1 of the Rules, and kiosks described in Section 3.4 of the Rules. Without limiting the generality of the foregoing, the Commercial Unit Owner shall have the right, from time to time, to designate portions of the General Common Elements adjacent to the Commercial Unit or within a reasonable proximity of the Commercial Unit as Reserved General Common Elements to be utilized by the Commercial Unit Owner, its tenants, subtenants, licensees, contractors, agents, employees, invitees and customers, to the extent such designation is reasonably connected to the use and operation of all or a portion of the Commercial Unit; subject, however, to Applicable Law and the prior consent of the Board of Directors that shall be granted unless such use has or shall have an adverse and material impact on another Unit Owner. The Commercial Unit Owner shall have priority over the other Unit Owners to use such Reserved General Common Elements for outdoor dining and seating. Such areas designated by the Board of Directors shall not be construed as a sale or other disposition of the General Common Elements. The Unit Owner who is granted a license to use a Reserved General Common Element shall be responsible for the care, operation, cleaning, maintenance and repair of such Reserved General Common Element during the term of such license or arising out of the result of such use during the term of such license, unless otherwise agreed by the Board of Directors.

(d) **Limited Common Elements.** The **"Limited Common Elements"** consist of those portions of the Common Elements that are (a) designated as Limited Common Elements on the Condominium Plats or (b) a part of the Common Elements that serve less than all of the Units and are determined from time to time by the Board of Directors to be Limited Common Elements. Any such Limited Common Elements shall be reserved for the exclusive

use of the Unit Owner(s) of the Unit(s) to which they are declared to be appurtenant by appropriate designation in the Condominium Documents or by the Board of Directors, subject to any easements and other rights as may be reserved or granted by the Condominium Documents or as otherwise established from time to time by the Board of Directors. Each Unit to which a Limited Common Element has been assigned shall be the owner of an undivided interest as a tenant-in-common in such Limited Common Element in accordance with such Unit Owner's Alternative Percentage Allocation attributable thereto.

(e) Any decisions concerning the use, operation, maintenance or repair of a Limited Common Element appurtenant to one or more Units shall be solely decided by the Unit Owner(s) to which such Limited Common Element has been assigned based upon such Unit Owner(s) Alternative Percentage Allocation.

(f) **Delegation of Use.** Each Unit Owner may delegate its right to use and enjoy the General Common Elements and any Limited Common Elements appurtenant to such Unit to such Unit Owner's employees, guests, agents, customers, licensees, invitees, and tenants, and to such other persons as may be permitted by the Board of Directors. Each person having the right to the use and enjoyment of the Common Elements, including, without limitation, such Unit Owner's employees, guests, agents, customers, licenses, invitees and tenants shall comply with the Condominium Documents and such Unit Owner shall use reasonable efforts to cause such third parties to comply with the Condominium Documents with respect to same.

**Section 2.6. Unit Subdivision.** Subject to Section 11.15 below, any Unit Owner may subdivide its Unit into two (2) or more units in accordance with Section 11-107(d) of the Maryland Condominium Act. It shall be a condition of the subdivision of a Unit that the original Percentage Interest, Alternative Percentage Allocation and the vote appurtenant to such Unit shall be allocated between or among the resulting subdivided units and that such subdivision does not have a material and adverse impact on the Condominium or other Unit Owners.

**Section 2.7. No Severance of Ownership.** No Unit Owner shall execute any lease, Mortgage, bring an action in partition, or otherwise transfer, convey (with or without consideration), or encumber its Unit without including therein the appurtenant Common Elements. The intention of this Section is to prevent any severance of the combined ownership interests in a Unit and its appurtenant Common Elements and shall not otherwise preclude the transfer, conveyance, lease or mortgage of all or a part of a Unit. Any lease, Mortgage or other instrument purporting to affect one or more of such interests, without including all such interests, shall be conclusively deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant Common Elements of any Unit may be sold, conveyed, transferred, or otherwise disposed of, except as part of a sale, conveyance (with or without consideration), transfer, or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, conveyance (with or without consideration), transfer, or other disposition of such part of the appurtenant Common Elements of all Units. Any conveyance, encumbrance, sale (including, but not limited to, a judicial sale), or other transfer of an appurtenant Common Element in violation of the preceding sentence shall be void.

***Section 2.8. Party Walls and Party Floors.***

(a) The party walls and party floors on portions of the dividing lines between two or more Units or between a Unit and a portion of the Common Elements shall be governed by this Section 2.8 and, to the extent not inconsistent with the provisions of this Section, by Applicable Law or other applicable agreements regarding party walls and party floors and liability for property damage, personal injury, or death due to negligence, willful or intentional acts or omissions.

(b) Except as otherwise provided in the Condominium Documents, the cost of reasonable repair, maintenance and replacement of a party wall or party floor shall be shared on an equal basis by the Unit Owners that make use of the wall or floor.

**ARTICLE 3**  
**EASEMENTS; COOPERATION IN DEVELOPMENT;**  
**ALTERNATIVE PERCENTAGE ALLOCATION**

***Section 3.1. General Common Elements, Utility and Structural Easements.*** Each Unit Owner shall have the benefit of an easement in common with all other Unit Owners to use the General Common Elements, subject to the right of the Board of Directors to designate portions of the General Common Elements as Reserved General Common Elements pursuant to Section 2.5(c) above. Each Unit shall be burdened by an easement in favor of all other Unit Owners and Units for the use of the General Common Elements serving such other Units as now or hereafter located in the burdened Unit. Every portion of the Property that contributes to the structural support of other Units or the Common Elements shall be burdened with an easement of structural support for the benefit of such other Units and Common Elements. Each Unit Owner shall also have the benefit of an easement to use, for their intended purposes, all pipes, wires, ducts, flues, cables, conduits, utility lines, and other similar materials and infrastructure that, upon the completion of the construction of the improvements on the Property or any replacements thereof, are located within another Unit or a Common Element and serving the Unit of the benefited Unit Owner.

***Section 3.2. Other Easements.***

(a) **Maintenance and Repair by Council of Unit Owners and by the Unit Owners.** The Council of Unit Owners shall have an easement in, over, under, through or across the Property for the inspection, operation, maintenance, repair, improvement, or replacement of the Common Elements, and each Unit Owner shall have an easement in, over, under, through or across the Property for the inspection, operation, maintenance, repair, improvement or replacement of the Limited Common Elements, if any, benefiting such Owner's Unit. Subject to Section 3.5 below, the Council of Unit Owners shall have an irrevocable right (but not the obligation) and an easement to enter the Units to make repairs to the Units when the repairs appear reasonably necessary to prevent damage to the Common Elements, prevent injury or death to a person or to reconstruct the Units in the event of a casualty or if otherwise required to do so by the Condominium Documents. All repairs shall be performed in accordance with applicable law and in a good and workmanlike manner consistent with prevailing industry standards for First Class properties.

(b) **Access.** Each Unit Owner shall have the unrestricted right of ingress and egress through the General Common Elements to its Unit. Each Unit Owner shall have an easement across those portions of the General Common Elements designed for vehicular and pedestrian ingress and egress for access to and from their respective Units and to and from public roads adjacent to the Property. No walls, fences, barriers or other obstructions that unreasonably interfere with or limit the free flow of vehicular and pedestrian traffic to and from the Units, or that otherwise unreasonably interferes with the activities of the Unit Owners, shall be erected or allowed to remain within such General Common Elements, without the prior written consent of the Unit Owner of the affected Unit, which consent may be granted or withheld in its sole and absolute discretion. Each Unit Owner shall have a right of access through other Units to the extent reasonably necessary to gain access to the General Common Elements or to any other portions of the Condominium that serve or benefit such Unit. The Parking Beneficiaries shall have an unrestricted easement through those portions of the Parking Unit designated for vehicular and pedestrian ingress, egress, access and vehicular parking within the Parking Unit. The owners of parking units located or to be located within the Residential Parking Facility (and their respective tenants, invitees, licensees and guests) shall have a non-exclusive unrestricted easement over and across the parking ramp which provides pedestrian and vehicular access from the Parking Unit to the Residential Parking Facility for ingress and egress to the Residential Parking Facility. By acceptance of a deed of conveyance, articles of transfer, or other applicable means of conveying record title to the Unit, each Unit Owner thereby grants a reasonable right of access to the Unit to the Board of Directors, the Condominium Managing Agent, other Unit Owners and any other persons authorized by the Board or the Condominium Managing Agent, to allow for the exercise of their respective rights, powers and responsibilities under the Condominium Documents including, without limitation, (a) making inspections, (b) correcting any condition originating in the Unit or in a Common Element to which access is obtained through the Unit or threatening the Common Elements, (c) performing installations, alterations or repairs to the Common Elements, or otherwise as reasonably deemed necessary. Any exercise of the rights of access pursuant to this Section shall be made after a prior request for entry is made and any such entry shall be made at a time reasonably convenient to the Unit Owner and, if requested by the Unit Owner, in the company of a representative of such Unit Owner. In all events, any such entry shall be exercised in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Unit. Except for areas within any Unit that are designated as "**Restricted Areas**" by written notice from the Unit Owner to the Condominium Managing Agent, in case of an emergency, such right of entry shall be immediate, whether or not a representative of the Unit Owner is present or a prior request was made. Restricted Areas in any Unit may not be accessed at any time unless a representative of the respective Unit Owner is present or the Unit Owner has otherwise consented to such access. Examples of Restricted Areas may include jewelry stores, bank vaults, cash handling areas, pharmacy inventory storage and display areas and similar areas containing property to which access must reasonably be limited for purposes of loss prevention, inventory control, confidentiality or compliance with Applicable Law. Any Unit Owner that designates any Restricted Areas shall provide the Condominium Management Agent and the other Unit Owners with the name(s) and phone number(s), and email address(es) of one or more agents or representatives who can readily be contacted if access to a Restricted Area is required. Units or portions thereof may not be designated as a Restricted Area unless there is a commercially reasonable and legitimate basis for doing so.

(c) **Construction, Development and Maintenance.** During the initial construction of the improvements on the Property, the Property shall be subject to an easement, for the benefit of each Unit Owner, the Council of Unit Owners and their respective agents for the purpose of access, the storage of building supplies and materials and equipment and for any and all purposes reasonably related to the initial development and construction of the Units and the Common Elements. Subsequent to substantial completion of the building shell for the Commercial Unit and Residential Unit, the Property shall be subject to an easement for the benefit of each Unit Owner, the Council of Unit Owners and their agents for purposes reasonably related to the completion, repair, replacement and maintenance of the Units and the Common Elements. To the extent it is feasible to do so, building supplies, materials and equipment shall be stored on the Common Elements rather than within a Unit of a Unit Owner not involved in the construction, reconstruction, improvement, repair or maintenance. In the exercise of any rights under this Section 3.2(c), there shall be no unreasonable and material interference with the use of any Unit or with the Common Elements for the purposes for which each is reasonably intended. Any person or entity exercising any rights under this Section 3.2(c) shall be obligated to promptly repair, at his/its own expense, any damage caused by the exercise of such rights and to restore promptly, to the extent practicable, any damaged real or personal property to the condition of such property prior to the exercise of such rights.

(d) **Utility Access.** To the extent access to utility, water and drainage systems serving any portion of the Property cannot be reasonably obtained through the General Common Elements, reasonable easements are hereby established through the Units and the Limited Common Elements to provide such use access. The Unit Owner seeking access to the utility systems pursuant to this subsection shall be responsible for restoring the areas through which access was obtained to the condition existing immediately prior to such access and shall be responsible for all costs associated with such access and restoration. The use of these utility easements shall not unreasonably interfere with or burden the use of the Unit in question.

(e) **Emergency Ingress and Egress.** To the extent emergency means of ingress and egress are not otherwise available through the General Common Elements, the Limited Common Elements and Units shall be subject to an easement for the benefit of the Unit Owners for emergency ingress and egress to and from their respective Units.

(f) **Unit Owners' Right to Grant Easements.** Except to the extent not prohibited or restricted by the Condominium Documents or the Maryland Condominium Act, the Unit Owners may grant easements through the General Common Elements and accept easements benefiting any portion of the Condominium, including easements for signage. Such grants shall require the approval of the Board of Directors, such approval not to be unreasonably withheld, conditioned or delayed.

(g) **Easement for Equipment.** The rooftop above the top floor of the Residential Unit shall be subject to an easement for the benefit of all Unit Owners for the installation, operation, maintenance, repair and replacement of a cooling tower, cooling tower supply and return piping and other HVAC equipment, kitchen exhaust shafts and fans, dishwasher exhaust shafts and fans and power, antennas, satellite dishes, and other similar telecommunications devices or equipment. All such equipment or apparatus shall be installed and maintained at the exclusive cost of its respective Unit Owner and without undue disruption



to the Residential Unit or the Residential Unit Owner. Notwithstanding the foregoing, to the extent such equipment or apparatus is installed, operated and maintained in accordance with the applicable design criteria specified in the Rules, manufacturer specifications and the Rules, such equipment or apparatus shall be deemed to have been installed, operated and maintained in a manner that does not create any undue disruption to the Residential Unit or the Residential Unit Owner. All such equipment or apparatus to the extent not required to be insured by the Council of Unit Owners shall be insured at the exclusive cost of its respective Unit Owner. The Owner of the Residential Unit shall have a reasonable right to approve the plans and specifications for any equipment or apparatus and structural reinforcements installed by the Owner of the Commercial Unit on the roof above the top floor of the Residential Unit, such approval not to be unreasonably withheld, conditioned or delayed. If a cooling tower is required to be installed by another Unit Owner on the rooftop above the top floor of the Residential Unit, such installation shall include any necessary structural reinforcement and shall comply with the requirements of this Section 3.2(g). Any Unit Owner utilizing the roof for any of the foregoing purposes shall be responsible for any damage done to the roof and shall insure that the roof is returned to the same sound condition as existing prior to the installation of any such apparatus, ordinary wear and tear excepted. Any Unit Owner utilizing the roof for any of the foregoing purposes shall provide notice to the Residential Unit Owner in accordance with Section 3.5 below. No equipment or apparatus shall be permitted if its installation, use or operation may result in a voiding of the roof warranty as determined by the entity providing the roof warranty. Any work performed on the roof shall be performed or supervised by the entity providing the warranty for the roof. After the expiration of the warranty for the roof, any work performed on the roof shall be performed or supervised by a qualified licensed commercial roofing contractor with substantial experience with similar roofing systems as selected by the Board of Directors or the Condominium Managing Agent.

(h) **Easements to the Commercial Management District for the Project.**

The Commercial Management District for the Project shall have an easement in, over, under, through and across the Common Elements for the purpose of inspection, operation, maintenance, repair, improvement and replacement of public amenities for the Project, such as, by way of example, streetscapes, landscaping, public benches and public bicycle racks. Nothing contained in the foregoing shall impose any obligation on the part of the Commercial Management District to perform any inspection, operation, maintenance, repair, improvement or replacement of public amenities for the Project and any such duties of the Commercial Management District shall be governed by a separate agreement between the Commercial Management District and the Council of Unit Owners.

(i) **Pedestrian Walkway Easement.** There is hereby reserved for the benefit of the general public a non-exclusive easement and right of passage on, through, over and across the pedestrian walkway, identified on the Condominium Plat as a General Common Element, for purposes of pedestrian ingress and egress to, from and across the Property; provided, however that the use and exercise of the easement established by this Section 3.2 (i) shall not unreasonably interfere with or disrupt the use and enjoyment of the Units or the General Common Elements by the Unit Owners and further provided, that, nothing contained herein shall limit the right of the Council of Unit Owners to control, operate and maintain the pedestrian walkway in a manner that will promote the safety, security and economic potential of the Property.

**Section 3.3. Encroachments.** If any portion of the improvements within the Property (including any improvements comprising the Units or Common Elements now or hereafter constructed) encroaches upon any other portion of the Property as a result of settlement, shifting, architectural or engineering deviations (within typical construction industry standards for mixed-use projects or as authorized or agreed by all affected Unit Owners) or movement of the encroaching improvement, an easement for such encroachment shall exist so long as the encroaching improvement shall remain in existence, provided such encroachment is not intentional and does not materially adversely affect the burdened Unit (or as authorized or agreed by all affected Unit Owners). If any building or other improvements within the Property or within a Unit shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation and then rebuilt to essentially the same configuration as originally constructed prior to such casualty or condemnation, an easement shall exist for unintentional encroachments by such buildings or other improvements upon any portion of the Property that do not materially adversely affect the burdened Unit for so long as such rebuilt buildings or other improvements shall remain in existence. The easement rights granted under this Section shall include an easement for the maintenance, repair, and replacement of the encroaching improvement.

**Section 3.4. Characteristics of Easements.** Subject to the provisions of the Condominium Documents, all easements and rights of ingress, egress and access created by this Declaration are appurtenant to and run with the Property, are perpetual, free of charge and non-exclusive, may be used by the agents, employees, tenants, licensees, contractors, customers and invitees of the Benefited Owner and shall continue in full force and effect until the termination of this Declaration, unless otherwise terminated with the written consent of the Benefited Owner. The word "in" with respect to an easement granted "in" a particular Unit or Common Element means, as the context may require, "in", "to", "over", "through", "on", "across", and "under", or any one of the foregoing.

**Section 3.5. Exercise of Easements.** To the extent that this Article 3 establishes easements for the benefit of the Council of Unit Owners or one or more Unit Owners, the Council of Unit Owners and each such Unit Owner (the "**Benefited Owner**") shall have all rights and privileges reasonably necessary to the exercise of such easements consistent with the rights and privileges of the other Unit Owners and the Council of Unit Owners; provided, however, that the Benefited Owner shall take reasonable steps to minimize any damage to the Property, or injury or damage to other Unit Owners, as a result of its exercise of such rights and privileges and in no event shall the exercise of such easement violate the terms of the Condominium Documents or unreasonably or materially interfere with or disrupt the use or enjoyment of any Unit or with the use or enjoyment of the Common Elements for the purposes for which each is reasonably intended. Each Unit Owner exercising any easement rights and making any repairs pursuant to Section 3.2(a) of this Declaration shall be obligated to promptly repair, at its own expense, any damage it caused by the exercise of such rights and to restore promptly, in accordance with Applicable Law and in a good and workmanlike manner consistent with prevailing industry standards for First Class properties, any damaged real or personal property to the condition of such property prior to the exercise of such rights. The Benefited Owner's use or exercise of the easements established by this Article 3 shall not unreasonably interfere with or disrupt the use and enjoyment of the Units or Common Elements by the other Unit Owners. Except in cases involving an emergency, a Benefited Owner shall make a

reasonable effort to (i) give fifteen (15) days prior notice to the Unit Owner of any Unit burdened by an easement to be entered for the purpose of making repairs or replacements to materials or equipment located within an easement appurtenant to the Unit of the Unit Owner making the repair or replacement, and (ii) perform such maintenance and replacements at such times and in such a manner that will not cause undue disruption or interference with the activities of any Unit Owner.

***Section 3.6. Burdened Owner's Right to Relocate a Benefited Owner's Easement.***

The Owner of a Unit burdened by an easement (the "**Burdened Owner**") shall have the right, at the Burdened Owner's expense, to relocate the easement and any facilities located therein with the prior approval of the Benefited Owner, which approval shall not be unreasonably withheld, conditioned or delayed. It shall not be deemed unreasonable to withhold approval if in the sole discretion (acting in good faith, and not arbitrarily or capriciously) of the Benefited Owner such relocation materially and adversely affects the cost, efficiency or use of the easement or facilities located therein. The Burdened Owner shall take commercially reasonable steps to minimize any interference with the use of the easement by the Benefited Owner during the course of its relocation. In no event shall the Burdened Owner's exercise of its right of relocation unreasonably or materially interfere with the use of the Benefited Owner's Unit or the rights of the Benefited Owner to the use and enjoyment of the easement or the facilities located therein.

***Section 3.7. Development Cooperation.*** Subject to the terms and conditions of the Condominium Documents, each Unit Owner shall use commercially reasonable efforts to cooperate with each other Unit Owner in any construction, reconstruction, or improvement of a Unit that is in accordance with this Declaration, the Bylaws and Applicable Law. Without limiting the generality of the foregoing, to the extent any Unit Owner reasonably requires site plans, permits, consents, approvals, utility easements, or other rights or information from other Unit Owners to fulfill any requirements imposed by any state or local governmental or quasi-governmental agencies, or utility companies or otherwise in connection with the permitted use or development of such Unit Owner's Unit, such other Unit Owners shall provide such consents, approvals, rights, or information, provided that (a) all costs reasonably related to the same shall be borne by the requesting Unit Owner, and (b) such consents, approvals, rights, or information shall not materially and adversely affect the use, operation or enjoyment of the Unit of the cooperating Unit Owner.

***Section 3.8. Alternative Percentage Allocations and Special Maintenance Expenses.***

General Common Expenses shall be shared among the Unit Owners based on their respective Percentage Interests as set forth on Exhibit "D" attached hereto. All expenses incurred by or on behalf of the Council of Unit Owners, except for Special Maintenance Expenses (herein defined), shall be deemed General Common Expenses. However, the costs associated with the operation, maintenance, insurance, repair and replacement of certain portions of the Property (the "**Special Maintenance Items**"), including, but not limited to, those described on Exhibit "E" attached to and made a part hereof are based solely on an allocation different than their respective Percentage Interests. Such different allocation is hereinafter referred to as the "**Alternative Percentage Allocation.**" All costs associated with operation, insurance, maintenance, repair and replacement of the Special Maintenance Items and Limited Common Elements, including but not limited to those listed on Exhibit "E" shall be shared among the Unit Owners based solely on the Alternative Percentage Allocation *provided, however*, that to the

extent there is no Alternative Percentage Allocation designated to any Special Maintenance Item, then such allocation shall be based upon the Percentage Interest of the Unit Owner(s) to which such Special Maintenance Item is appurtenant. All expenses associated with the operation, insurance, maintenance, repair and replacement of the Special Maintenance Items referenced in Exhibit "E" are collectively hereinafter referred to as the "**Special Maintenance Expenses.**" The Special Maintenance Expenses shall be shared among the Unit Owners based on the Alternative Percentage Allocation as set forth on Exhibit "E" to this Declaration, or as otherwise determined by the Board of Directors. Notwithstanding anything contained in the Condominium Documents to the contrary, any decisions concerning the use, operation, insurance maintenance and repair of Special Maintenance Items shall be solely decided by the Unit Owner(s) responsible for the Special Maintenance Expenses of such Special Maintenance Items.

#### **ARTICLE 4** **RULES; MANAGEMENT**

**Section 4.1. Rules.** Reasonable Rules not in conflict with this Declaration, the Bylaws and the Maryland Condominium Act concerning the use and enjoyment of the Property may be promulgated and amended from time to time by the Board of Directors in accordance with the Bylaws. Copies of the Rules and any amendments thereto shall be furnished to all Unit Owners promptly after adoption or amendment of such Rules. Rules that affect two (2) or fewer Unit Owners shall only require the consent of the affected Unit Owners. The Rules shall have the same binding effect on all Unit Owners as this Declaration or the Bylaws subject to Section 11.3(c) of this Declaration.

**Section 4.2. Condominium Managing Agent.** As more particularly set forth in Section 3.12 of the Bylaws, the Board of Directors may employ one or more professional, experienced Condominium Managing Agents to oversee the operation of all or a portion of the Condominium in accordance with the Condominium Documents. The Condominium Managing Agent(s) shall be entitled to receive a reasonable fee (which shall constitute a General Common Expense), as determined by the Board of Directors.

#### **ARTICLE 5** **UNIT AUTONOMY AND COUNCIL OF UNIT OWNERS AUTHORITY**

**Section 5.1. Autonomy of Units.** It is the intent of Declarant that the Condominium Documents establish a viable mixed-use condominium whereby the Commercial Unit, Residential Unit and Parking Unit can harmoniously co-exist with minimal disturbance or interference from one another. Except as otherwise set forth in the Condominium Documents, it is intended that each Unit be able to operate without unreasonable interference from another Unit or Unit Owner, and that each Unit Owner shall have exclusive control over its respective Unit, except to the extent that such control would materially interfere with the reasonable use, operation or enjoyment of any portion of the Property by another Unit Owner. Subject to and in accordance with the Condominium Documents, the Residential Unit Owner and the Commercial Unit Owner shall use commercially reasonable efforts to operate, manage and maintain its respective Unit in a First-Class manner and the Parking Unit Owner shall operate, manage and maintain the Parking Unit in a good and workmanlike manner, in accordance with all Applicable Law and comparable with other governmentally owned parking garages in the County; provided,

however, that in all circumstances, the Parking Unit Owner shall be expressly obligated to comply with the Rules that are applicable to the Parking Unit. Except as specifically set forth in Article 8 of this Declaration and the Rules, nothing contained in the Condominium Documents shall confer or be deemed to confer any right of review and/or approval on any Unit Owner or third party with respect to the nature or quality of the tenants, tenant mix, tenant selection or leasing program for the Commercial Unit or the Residential Unit or leasing program for parking spaces within the Parking Unit; such decisions being reserved in the sole and exclusive discretion of the respective Unit Owner.

**Section 5.2. Standard of Authority for the Council of Unit Owners.** Unless expressly provided otherwise in the Condominium Documents, the Council of Unit Owners and the Board of Directors shall exercise their rights and obligations under the Condominium Documents using commercially reasonable business judgment, taking into account, among other things, the provisions of Section 5.1 above, the uses of the Units, sound fiscal management of the Condominium, and the fiduciary duty of the Board to the Unit Owners. Without limiting the generality of the standards set forth in this Section, such standards shall apply to those matters in which the Board exercises its discretion under the Condominium Documents.

## **ARTICLE 6**

### **SECURITY**

The Council of Unit Owners and the Board of Directors shall have the right, but not the obligation, to maintain or support certain activities within the Property designed to enhance safety within the Condominium. Notwithstanding any references in the Condominium Documents, the Project or elsewhere to a security system, security personnel, fire access control systems or other systems of a similar nature (collectively, the “**Security Systems**”), neither the Council of Unit Owners, Declarant, the Unit Owners, their respective successors and assigns, nor any of their respective officers, members, employees, directors, agents or affiliates shall in any way be considered insurers or guarantors of security within the Condominium, nor shall any of them be responsible or held liable for any loss, damage, injury or death by reason of failure to provide adequate security or the ineffectiveness of the Security Systems. No representation or warranty is made that any Security System cannot be compromised or circumvented, nor that any such Security Systems or security measures undertaken or provided will in all cases prevent loss, damage, injury or death or provide the detection or protection for which the Security System is designed or intended. Each Unit Owner acknowledges and understands that the Council of Unit Owners, Declarant and the Unit Owners are not insurers or guarantors and that each Unit Owner assumes all risks for loss, injury or death to persons, or for loss or damage to its Unit and to the contents of its Unit resulting from the failure or ineffectiveness of a Security System.

## **ARTICLE 7**

### **INDEMNITIES**

Each Unit Owner (an “**Indemnitor**”) shall defend (with counsel reasonably acceptable to the Indemnatee), indemnify and hold harmless, at its expense, the Council of Unit Owners and any other Unit Owner (individually and collectively the “**Indemnatee**”) against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those

incurred through appeals), which may be imposed upon or incurred by or asserted against any such Indemnitee, to the extent arising out of (i) the development, construction, use, operation or maintenance by the Indemnitor or any tenant, subtenant, licensee, employee, contractor and agent of such Indemnitor of any portion of the Condominium, including those instances where the Indemnitee has used commercially reasonable efforts to cooperate with a Unit Owner in accordance with Section 3.7, above, and including, but not limited to, the execution of or joinder in any of the documents or other items specified in Section 3.7, above, or (ii) the Indemnitor's use or exercise of the easements established by Article 3, except to the extent any damage, injury or death shall have been caused by the negligence or willful act or omission, of such Indemnitee or its tenants, subtenants, licensees, employees, contractors and agents. This indemnification shall not be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment arises out of injury, death, or damage occurring in, upon or about the Common Elements and is actually recovered by any liability insurance maintained by the Council of Unit Owners (or if the Council of Unit Owner's is named as an additional insured on such insurance policy) pursuant to the Bylaws.

## **ARTICLE 8**

### **USE RESTRICTIONS**

#### ***Section 8.1. Restrictions on Use of Units and Common Elements.***

(a) **General Use of Units and Common Elements.** Use of the Units and Common Elements shall be subject to the following:

(i) Nothing shall be done or kept within the Units or Common Elements by any Unit Owner that will increase the rate of insurance payable by the Board of Directors, unless the Unit Owner causing such increase pays the total increase in premiums attributable to such use or action. No Unit Owner shall knowingly (based upon its actual knowledge) permit anything to be done or kept within the Units or Common Elements that will result in the cancellation of insurance for all or any portion of the Property or that would be in violation of Applicable Law. No physical waste will be committed on the Common Elements.

(ii) No use shall be made of any portion of the Residential Unit, Commercial Unit or the Common Elements that is not comparable and in keeping with a First Class standard; provided, however, that no use shall be made to any portion of the Parking Unit that is not comparable with the use of other governmentally owned parking garages in the County, however, that in all circumstances, the Parking Unit Owner shall be expressly obligated to comply with the Rules that are applicable to the Parking Unit. No use shall be made of any portion of the Units or Common Elements that materially and adversely impedes the conduct of the business of any Unit Owner or its tenants, subtenants, licensees, employees, contractors and agents or the occupancy, use or enjoyment of any Unit for the purposes for which such Unit is intended as set forth in the Condominium Documents. Applicable Law relating to any portion of the Units or the Common Elements shall be complied with by and at the sole expense of the Unit Owner or the Board of Directors, whichever shall have the responsibility for such portion of the Units or the Common Elements.

(iii) Except for Reserved General Common Elements or as otherwise provided elsewhere in the Condominium Documents, no Unit Owner shall unreasonably obstruct any of the General Common Elements and no Unit Owner shall place or cause or permit anything to be placed on or in any of the General Common Elements without the approval of the Board of Directors, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that, except as provided in Section 3.2(c) of this Declaration, in no event shall any obstructions within the General Common Elements be permitted that would materially interfere with access to or visibility of any Unit. No Unit Owner shall unreasonably obstruct a Limited Common Element that is reserved for the exclusive use of another Unit Owner. Except as otherwise provided elsewhere in the Condominium Documents, nothing shall be altered, constructed in, or removed from the General Common Elements except with the prior consent of the members of the Board of Directors, which approval shall not be unreasonably withheld, conditioned, or delayed. Nothing shall be altered or constructed in or removed from a Limited Common Element, except with the prior written consent of the Unit Owner(s) of the Unit(s) having the exclusive use thereof.

(iv) Except as provided in instruments recorded among the Land Records to which the Property is subject (including, but not limited to, the Condominium Documents), the Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Units.

## ***Section 8.2. Restrictions on Use of the Units.***

(a) **General Restrictions.** The Units shall be operated in accordance with the Condominium Documents and Applicable Law. Unless the Board of Directors otherwise agree, the Parking Unit and Residential Parking Facility shall always be utilized for parking and related purposes, and subject to Section 8.2(d), below, the Commercial Unit shall always be used commercial, retail and related purposes and the Residential Unit, other than the Residential Parking Facility, shall always be used for residential and related purposes. Without limiting the foregoing, unless otherwise agreed by the Board of Directors, the Parking Unit Owner shall use commercially reasonable efforts to restrict the use of the Parking Unit by persons other than the Residential Unit Owner, owners of dwelling units within the Residential Unit, the Commercial Unit Owner and their respective agents, employees, tenants, subtenants, licensees, customers and invitees (together, the "**Parking Beneficiaries**") to the extent reasonably necessary to provide and maintain adequate parking for the use and benefit of the Parking Beneficiaries. The Parking Unit Owner shall make available for the Parking Beneficiaries one hundred and five (105) parking spaces within the Parking Unit at all times.

(b) **Specific Restrictions.** In addition to the restrictions contained in the Rules, no Unit shall be utilized for any of the following uses unless otherwise expressly permitted in the Condominium Documents or by the Board of Directors:

(i) Any use that produces or is accompanied by any unusual fire, explosive or other damaging or dangerous hazard (including the storage, display or sale of explosives or fireworks, other than de minimus amounts of fireworks for sale to consumers to the extent permitted by Applicable Law).

(ii) Any shooting gallery or gun range (other than an electronic or arcade type shooting gallery or gun range).

(iii) Any operation primarily used as a storage warehouse and any assembling, manufacturing, refining, smelting, industrial, agricultural, drilling or mining operation (except that incidental storage use ancillary to residential use by the Residential Unit Owner shall be permitted).

(iv) Any automobile body shop or repair operation, including automobile servicing or repair work (e.g., oil change, tire change, body or paint shop, tune-up, brake or muffler service).

(v) Gasoline or automobile service stations.

(vi) Any residential use by the Commercial Unit Owner or the Parking Unit Owner, including but not limited to, single family dwellings, townhouses, condominiums, other multi-family units of other forms of living quarters, sleeping apartments or lodging rooms. This Section 8.2(b)(vi), however, does not apply to the Residential Unit.

(vii) Any veterinarian, veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops).

(viii) Any mortuary or funeral home.

(ix) Any facility or establishment primarily selling or exhibiting sexually explicit, or pornographic materials or a "head shop" (or any other type of establishment for the sale of illegal drugs and/or drug-related paraphernalia or equipment) or featuring strip tease acts or nude dancing.

(x) Any nightclubs, discotheque, dance hall, or bar whose sales of food do not constitute at least ten percent (10%) of its gross sales.

(xi) Any on-site commercial laundry, dry cleaning plant or Laundromat (however, any retail dry cleaning drop off and pick up store is permitted).

(xii) Any temporary or permanent storage of any "hazardous material" as that term may now or hereafter be defined by Applicable Law; provided, however, that this prohibition shall not apply to (a) supplies for cleaning and maintenance in commercially reasonable amounts required for use in the ordinary course of business, provided such items are incidental to the use of a Unit and are stored and used in compliance with Applicable Law, (b) standard office supplies in commercially reasonable amounts required for use in the ordinary course of business, provided such items are incidental to the use of the premises and are stored and used in compliance with Applicable Law, or (c) retail tenants' inventory generally held for resale in typical First Class retail projects and not prohibited elsewhere in the Condominium Documents, provided such inventory is stored and sold in compliance with Applicable Law.

(xiii) Any sales or leasing of new or used vehicles, including automobiles, trucks recreation vehicles or mobile homes (including used car lots), or any sales or



leasing of new or used vehicles, including automobiles, trucks, recreation vehicles, or mobile homes, within any portion of a Unit that is outside any leasable space within the Buildings of such Unit.

(xiv) Any carnival, flea market, pawn shop, or car wash.

(xv) Any gambling facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as blackjack or poker, or similar activities or a bingo hall; provided, however, that this prohibition shall not apply to slot machines, video poker, video blackjack or similar devices, Keno or the sale of governmental sponsored lottery tickets that are incidental to the business operation being conducted by the occupant of the Commercial Unit.

(xvi) Any "amusement parlor" consisting primarily of pin ball, video or similar arcade games in excess of 1,500 square feet.

(c) **Residential Restriction.** Except for the Residential Parking Facility, the Residential Unit shall only be used for residential and related purposes in a First Class manner and, except as may be expressly required by Applicable Law, no part of the Residential Unit shall be used for the purpose of an apartment hotel, hotel, time share development, assisted living residence, nursing home, homeless shelter, subsidized housing or similar moderate to low income housing, *provided, however*, that the Residential Unit may be used for corporate rentals (i.e., leases to parties who are leasing units for corporate housing purposes) to tenants, *provided, further*, that such corporate rentals shall not exceed twenty percent (20%) of all of the dwelling units within the Residential Unit. The foregoing restriction regarding subsidized or moderate to low income housing shall not apply to any "moderately priced dwelling unit" as defined in Chapter 25A of the Montgomery County Code, as amended (commonly referred to as a "MPDU"), required by the County. The Residential Parking Facility shall only be used for residential parking purposes in a First Class manner.

(d) **Commercial Restriction.** The Commercial Unit shall only be used for commercial, retail and related purposes in a First Class manner.

## **ARTICLE 9**

### **INSURANCE**

#### ***Section 9.1. Insurance to be Carried by the Council of Unit Owners.***

(a) Unless the Board of Directors otherwise agrees, it shall use commercially reasonable efforts to obtain on behalf of the Council of Unit Owners (or cause a Unit Owner to obtain on behalf of the Council of Unit Owners, subject to the prior approval of the other Unit Owners) the following insurance (or such greater or additional insurance as is deemed commercially reasonable by the Board of Directors) on or in connection with the Condominium:

(i) Insurance against risk of physical loss or damage to the Base Building (hereafter defined) and, to the extent insurable, the Common Elements located elsewhere on the Property, as provided under "all-risk of physical loss" extended form or equivalent policy of insurance in amounts of not less than the full replacement cost of the Base

Building (exclusive of excavation and foundation costs) or such other amount as is deemed adequate by the Board of Directors to prevent the Condominium, the Board of Directors and all Unit Owners from being a co-insurer in the event of casualty loss, without deduction for depreciation; and including coverage for common boiler and machinery, and coverage for the perils of hail, windstorm, earthquake (in reasonable amounts if the Condominium is located in an earthquake zone), flood coverage (in reasonable amounts if the Condominium is located in a special flood hazard area) and, to the extent required by a Mortgagee, terrorism insurance (however, if the Mortgagee of only one Unit requires terrorism insurance, then such insurance shall be at the sole cost and expense of the Unit Owner of that Unit). Such policies shall contain replacement cost and agreed amount endorsements and shall contain commercially reasonable deductibles. If any portion of the Base Building constitutes a legal non-conforming structure under Applicable Law, such policies shall also include Applicable Law coverage endorsement. As used herein the term "**Improvements and Betterments**" means those portions of the interior of a Unit whose removal will not materially adversely affect the structure, safety or exterior appearance of the Base Building or the functionality of any other Unit located within the Building. Examples of Improvements and Betterments include non-load bearing interior walls and partitions, floor coverings, wall coverings, furniture and fabrics, plumbing fixtures exclusively serving a single Unit, kitchen fixtures, drop ceilings and utility systems serving only a single Unit. Improvements and Betterments do not include, among other things, the exterior walls, windows, doors and roofs of the Building, concrete floor or ceiling slabs, beams, columns and structural framings, life safety (including sprinklers) systems, elevators and elevator shafts, stair wells and common utility systems. The Building, saving and excepting the Improvements and Betterments located therein, is hereinafter called the "**Base Building**." To the extent a Unit Owner desires additional insurance coverage beyond that required to be obtained by the Board of Directors, such Unit Owner may (i) obtain the same at its own expense or (ii) have the Board of Directors obtain the same, provided that such Unit Owner reimburses the Council of Unit Owners for all costs and expenses related to such additional insurance.

(ii) Commercial General Liability Insurance and, to the extent applicable, Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability) against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Property, in an amount not less than \$25,000,000 per occurrence/annual aggregate and all other coverage extensions that are usual and customary for properties of this size and type; *provided, however*, that the Board of Directors shall have the right from time to time to require such higher limits as may be reasonable and customary for First Class properties.

(iii) Worker's compensation insurance covering all persons employed by the Board of Directors or the Council of Unit Owners in connection with any work done on or about any of the Property, subject to such limits as may be required by Applicable Law.

(iv) Comprehensive Boiler, Machinery and Pressure Vessel Insurance covering any of the equipment on or in the Building used by the Council of Unit Owners or jointly used by both Unit Owners in an amount not less than \$5,000,000 per occurrence for damage to property; *provided, however*, that the Board of Directors shall have the right from time to time to require such higher limits as may be reasonable and customary for properties of this size and type. If the insurance described in Paragraph (i) above and the insurance described

in this Paragraph (iv) are not written by the same insurer, then both policies shall contain a joint loss agreement provision.

(v) During any period in which significant construction, alterations, repairs or reconstruction are being undertaken by the Board of Directors, builder's risk insurance covering the total completed value including any "soft costs" with respect to the improvements being constructed, altered, repaired or reconstructed (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction or repair of improvements or equipment, together with such "soft cost" endorsements and such other endorsements as the Board of Directors or a Mortgagee(s) of the Unit(s) may reasonably determine (however, if the Mortgagee of only one Unit requires such additional coverage or endorsement(s), then such endorsements shall be at the sole cost and expense of the Unit Owner of that Unit) and commercial general liability, workers' compensation and automobile liability insurance with respect to the services provided by the contractor.

(vi) Such other insurance, including, but not limited to, directors and officers and fidelity insurance (covering all Condominium employees and employees of the Condominium Managing Agent, including principals and employees of the Condominium Managing Agent), as the Board of Directors shall determine from time to time desirable, as required by Applicable Law, or as customarily carried by owners or operators of First Class properties. Notwithstanding the certain types of insurance and amounts of coverage required to be obtained pursuant to this Section 9.1(a), in obtaining insurance the Board of Directors may consider such factors as availability of types of insurance and the market for insurance premiums in deciding which type of insurance and the amounts of coverage to obtain, provided the same is consistent, as to types of coverage and amounts, with the requirements generally of institutional lenders or prudent owners or operators of First Class properties.

(b) The insurance required by Section 9.1(a) shall be written by companies which have a Best's rating of A-/VII or above by Best's Rating Guide (or equivalent rating agency authorized to do business in the State of Maryland if Best no longer publishes insurance ratings). The insurance policies (i) shall be for such terms as the Board of Directors may reasonably approve and (ii) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. The insurance referred to in Section 9.1(a)(i), (iv) and (v) shall name the Unit Owners and the Council of Unit Owners as additional insureds and the Mortgagees of the Units as Mortgagees as their respective interests may appear and shall name the Insurance Trustee as loss payee. The insurance referred to in Section 9.1(a)(ii) shall name the members of the Board of Directors (if available for the Directors at commercially reasonable rates) and the Council of Unit Owners as insureds and the individual Unit Owners and the Mortgagee of each Unit as additional insureds and shall be primary and non-contributory to any other coverage carried by such entities. If said insurance or any part thereof shall expire, be withdrawn, become void or become reasonably unsatisfactory to a Unit Owner or the Mortgagee of a Unit, the Board of Directors shall immediately obtain new or additional insurance reasonably satisfactory to such Unit Owner or Mortgagee; provided, however, that if such insurance policy or any part thereof should become reasonably unsatisfactory to a Unit Owner or a Mortgagee of Unit Owner, then the dissatisfied Unit Owner or the Unit Owner of the dissatisfied Mortgagee shall be solely responsible for the additional costs incurred by the Council of Unit Owners for replacing such

insurance policy. To the extent reasonably available, all insurance policies maintained pursuant to this Article 9 shall include a provision stating that an act or omission by a Unit Owner, unless acting within the scope of authority and on behalf of the Council of Unit Owners, does not void the insurance policy and is not a condition to recovery under the policy.

(c) Each insurance policy of the type referred to in Section 9.1(a)(i), (ii), (iv) and (v) shall contain standard non-contributory mortgagee clauses in favor of and reasonably acceptable to each Mortgagee. Each policy of the type required by any provision of this Section 9.1(a), except clause (iii) thereof, shall provide that it may not be cancelled or substantially reduced except after thirty (30) days' prior notice to the Board of Directors, the Council of Unit Owners, each Unit Owner and each Mortgagee. Each such policy of the type referred to in Section 9.1(a)(i), (iv) and (v) shall also provide that with respect to Mortgagee(s) any loss otherwise payable thereunder shall be payable notwithstanding any act or omission of the Board of Directors, the Council of Unit Owners or a Unit Owner. Neither the Board of Directors, the Council of Unit Owners, nor any Unit Owner shall occupy or use any portion of the Condominium for purposes more hazardous than those permitted by the provisions of such policy, provided that no such policy shall unreasonably restrict the purposes for which the Units are intended to be used. The documentation with respect to each Mortgage shall contain provisions (and the Mortgagee shall acknowledge therein) to the effect that the Mortgagee acknowledges that the proceeds of the insurance policies required to be carried under Section 9.1(a)(i), (iv), and (v) and the additional assessments to be funded under Section 10.3(d) below, shall be available for repair and restoration of the Condominium. However, any Mortgagee shall be entitled to impose reasonable procedures on the disbursement of insurance proceeds for the repair and/or restoration of the Base Building (but in no event shall the Mortgagee be entitled to withhold such insurance proceeds), including a demonstration by the Board of Directors that the amount of such proceeds (together with such other funds as the Council of Unit Owners may agree to make available under Section 10.3(d), below) is sufficient for such purpose.

(d) The Board of Directors shall pay as they become due all premiums for the insurance required by Section 9.1(a), shall renew or replace each policy and deliver to each Unit Owner and the Mortgagee of each Unit, promptly upon request, evidence of the payment of insurance premiums and shall promptly, upon request, deliver to each Unit Owner and the Mortgagee of each Unit, promptly upon request, copies of all original certificates of insurance.

(e) The Board of Directors shall have the replacement cost and insurable value of the Condominium determined from time to time as may be reasonably determined by the Board of Directors or as may be required by the insurance carrier.

(f) If, subject to Section 9.1(a) hereof, the insurance in Section 9.1(a)(i), (ii), (iv) and (v) is procured by a Unit Owner on behalf of the Council of Unit Owners, then such coverage may be carried under a blanket policy so long as such coverage fulfills the requirements contained herein, provided that such coverage is specifically allocated to the Condominium and cannot be exhausted by claims related to other property owned by such Unit Owner.

(g) The premiums payable with respect to the insurance described in Section 9.1(a) shall be a General Common Expense, except to the extent such insurance is for Special

Maintenance Items, in which case premiums for Special Maintenance Items shall be a Special Maintenance Expense.

**Section 9.2. Adjustment of Insurance Coverage.** Notwithstanding anything in the Condominium Documents to the contrary, each Unit Owner may, at its election and not more than once every three (3) years, reevaluate the adequacy of the insurance coverages obtained pursuant to Section 9.1 above. If such coverages have become inadequate in comparison to the coverages that are generally maintained for properties similar to the Condominium, then such Unit Owner may require that the Board of Directors provide such additional insurance coverage as is reasonably necessary.

**Section 9.3. Insurance to be Carried by the Unit Owners.** Each Unit Owner shall carry the insurance required under this Declaration and shall deliver certificates of insurance in form and substance reasonably satisfactory to the Board of Directors evidencing such coverage to the Board of Directors upon request. In addition, each Unit Owner shall carry all-risk of physical loss insurance coverage insuring the Improvements and Betterments located within such Owner's Unit for the full replacement cost thereof. The liability of carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Notwithstanding the foregoing, during such time that the City of Rockville, Maryland is the fee simple owner of the Parking Unit, the City of Rockville may maintain the insurance required under this Section 9.3 pursuant to the City of Rockville's self-insurance program administered by the Division of Risk Management for Montgomery County, Maryland (i) in accordance with the provisions of the Local Government Tort Claim Act, and (ii) for all of the City's employees. If the City of Rockville elects to self insure pursuant to the foregoing, then the Council of Unit Owners shall have the right to annually audit, by an independent insurance consultant, the funds maintained in such self-insurance program in order to ensure that such funds are adequate to pay out any such claims or potential claims. If such funds are determined to be inadequate for such purpose, then the Council of Unit Owners may purchase the insurance coverage required to be maintained by the City of Rockville pursuant to this Section 9.3 and the City of Rockville shall reimburse the Council of Unit Owners the cost of acquiring such policy as a Special Maintenance Expense. In addition to the foregoing, the Parking Unit Owner shall defend (with counsel reasonably acceptable to the Council of Unit Owners and the other Unit Owners), indemnify and hold harmless, at its expense, the Council of Unit Owners and any other Unit Owner against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against the Council of Unit Owners or any other Unit Owner to the extent the funds in the Parking Unit Owner's self insurance program are insufficient or inadequate for the purpose of paying out any claims against the Parking Unit Owner. The obligation of the Parking Unit Owner to indemnify the Council of Unit Owners and the other Unit Owners pursuant to this Section 9.3 is not subject to any defense of sovereign immunity which the Parking Unit Owner might otherwise have and such defense is hereby barred.

**Section 9.4. Mutual Waiver of Subrogation.** With respect to property loss or damage, the Council of Unit Owners and Board of Directors for the Condominium waive any rights of recovery against the Unit Owners and the Unit Owners waive any rights of recovery against the

other Unit Owner(s) and the Council of Unit Owners, regardless of whether such loss is due to the negligence of any party. Any party obtaining insurance shall also ensure that all property insurance policies obtained by the Board of Directors for the Condominium or by a Unit Owner shall include a clause or endorsement denying the insurer any rights of recovery or subrogation in favor of the Unit Owners and the Council of Unit Owners.

## **ARTICLE 10**

### **REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY**

***Section 10.1. When Repair and Reconstruction are Required.*** Except as otherwise provided in Section 10.4 [When Reconstruction is Not Required], if all or any part of the General Common Elements or of the Base Building are damaged or destroyed as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration thereof.

#### ***Section 10.2. Procedure for Reconstruction and Repair.***

(a) **Cost Estimates.** Subject to Section 10.4 [When Reconstruction is Not Required], as soon as reasonably practicable under the circumstances after a fire or other casualty causing damage to any portion of the Common Elements or of the Base Building, the Board of Directors shall obtain reliable and detailed estimates (if reasonably practicable under the circumstances, no fewer than three (3)) of the cost of repairing and restoring such portion of the Common Elements and the Base Building to a condition at least as good as that existing before such fire or other casualty.

(b) **Plans and Specifications.** Unless otherwise agreed by the consent of the members of the Board of Directors, any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original construction of the Property, using contemporary building materials and technology to the extent feasible, subject to any modifications required by changes in Applicable Law and any alterations or modifications made to the Property since the date of the original construction.

#### ***Section 10.3. Disbursements of Construction Funds.***

(a) **Construction Fund and Disbursement.** The proceeds of the Council of Unit Owner's insurance on account of a fire or other casualty, and the sums received by the Board of Directors from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund that shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(i) If the estimated cost of reconstruction and repair of the Common Elements and the Base Building is less than ten percent (10%) of the Council of Unit Owners' annual budget, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors;

(ii) If the estimated cost of reconstruction and repair of the Common Elements and the Base Building is ten percent (10%) or more of the Council of Unit Owners' annual budget, then with respect to the coverages in Section 9.1(a) (i), (iv) and (v), payments

shall be made to the Insurance Trustee in trust, as loss payee. The construction fund shall be disbursed in payment of such respective costs upon approval of a reputable architect licensed to practice in Maryland who has been employed by the Board of Directors (and approved by the Insurance Trustee) to supervise such work and upon obtaining a release of liens from all contractors and subcontractors being paid, payment is to be made monthly as the work progresses (subject to any applicable retainage). The architect shall be required to furnish a certificate to the Board of Directors and the Insurance Trustee giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (A) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (B) there is no other outstanding indebtedness known to such architect for the services and materials described; and (C) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) **Surplus.** The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds. If there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be either allocated to replacement reserves (if any) if the Board so determines, with the consent of the members of the Board of Directors, or allocated among all Unit Owners in proportion to the insured value of the respective Units or placed in the account of the Council of Unit Owners with the consent of the Member of the Board of Directors.

(c) **Order of Repair.** When the damage is to both Common Elements and the Base Building, the Council of Unit Owner's insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements and of the Base Building that enclose, service, or are necessary for the reasonable use, servicing and operation of the Units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the other portions of the Base Building, unless otherwise determined with the consent of the members of the Board of Directors. Notwithstanding the foregoing, the order of priority with respect to repair of the Base Building and Common Elements shall be (1) Base Building and General Common Elements and (2) Limited Common Elements, if any.

(d) **Deficit/Deductible.** If the insurance proceeds and the funds from the replacement reserves are insufficient to effectuate all required repairs, any deficit shall be funded by an assessment against all Unit Owners in proportion to the full replacement cost of the respective Units. Any deductible required to be paid in connection with any insurable loss shall be a General Common Expense, except to the extent such insurance is for a Limited Common Element or a Special Maintenance Item, in which case such deductible shall be a Special Maintenance Cost.

**Section 10.4. When Reconstruction is Not Required.** The Board of Directors by vote shall elect not to repair or replace or cause to be repaired or replaced any portion of the Base Building or the Common Elements for which insurance is required that is damaged or destroyed if (a) the Condominium is terminated, (b) repair or replacement would be illegal under any

Applicable Law, or (c) the Unit Owners vote not to repair or rebuild. If the Condominium is terminated, the insurance proceeds shall be distributed based upon the total insured value of the respective Units. If the Base Building or the Common Elements are not repaired, the insurance proceeds attributable to the damaged Base Building or the Common Elements shall be used to restore the damaged areas to a safe and reasonable condition. The insurance proceeds attributable to the Units and Limited Common Elements that are not rebuilt shall be distributed to the Unit Owners of those Units and the Unit Owners of the Units to which those Limited Common Elements appertained, or to the Mortgagees, based upon the total insured value of the respective Units. The remainder of the insurance proceeds shall be distributed to all the Unit Owners or to the Mortgagees, as their interests may appear, in proportion to the total insured value of the respective Units. If any Unit is not rebuilt, then such Unit's allocated interests shall be automatically reallocated as if the Unit had been condemned under Section 11-112 of the Maryland Condominium Act, and the Council of Unit Owners promptly shall prepare, execute and record among the Land Records an amendment to the Condominium Documents reflecting the reallocation.

## **ARTICLE 11**

### **MISCELLANEOUS**

***Section 11.1. Estoppel Certificate.*** The Council of Unit Owners and any Unit Owner, upon request of the other such party, shall promptly execute and deliver an estoppel certificate to such parties as are reasonably requested (including a Mortgagee, prospective purchaser, or lessee), at any time and from time to time, upon not less than ten (10) days prior written request. If applicable, the estoppel certificate shall include a statement certifying that the Condominium Documents are unmodified (except as identified in the estoppel certificate) and in full force and effect, describing the dates to which Condominium assessments or other charges have been paid, representing that, to such party's actual knowledge, there is no default (or stating the nature of the alleged default) and indicating such other factual and readily ascertainable matters with respect to the Condominium Documents as may reasonably be requested. If the Council of Unit Owners or any Unit Owner fails to execute and deliver the estoppel certificate in accordance with this Section 11.1, the requesting party, after a five (5) day notice and opportunity to cure, may execute and deliver an estoppel on behalf of the other party, which estoppel certificate shall be fully binding, provided that is factually accurate and correct to the requesting party's actual knowledge.

***Section 11.2. Averting Public Dedication.*** All or any portion of the Common Elements may be temporarily closed to such extent as the Board of Directors shall determine to be legally necessary and sufficient to prevent a dedication thereof or any accrual of any rights in any person other than the Unit Owners. The Board of Directors will use reasonable efforts to minimize disruption to each Owner's use of its Unit during the period of any temporary closure.

### ***Section 11.3. Construction and Enforcement.***

(a) The provisions of the Condominium Documents shall be liberally construed to achieve the purpose of creating a uniform plan for the operation of the Property as a condominium. The Condominium Documents are intended to comply with the applicable provisions of the Maryland Condominium Act and shall be so interpreted and applied. The



Council of Unit Owners, the Board of Directors, and any Unit Owner shall have the right to enforce the Condominium Documents by any proceeding at law or in equity against any person or persons violating any of the same, subject to the requirements of Article 7 of the Bylaws, either to restrain or enjoin violation or to recover damages, or both, and against any Unit to enforce any lien created by the Condominium Documents. Notwithstanding Section 11.20 of this Declaration to the contrary, the failure or forbearance to enforce any provision of the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

(b) There is a conclusive presumption that any violation or breach or any attempted violation or breach of any of the provisions of the Condominium Documents cannot be adequately remedied solely by action at law or exclusively by recovery of damages and may be remedied by injunctive or other equitable relief.

(c) In the event of any inconsistency between the provisions of this Declaration and the provisions of the Bylaws or the Rules, the provisions of this Declaration shall control. In the event of any inconsistency between the provisions of the Bylaws and the provisions of the Rules, the provisions of the Bylaws shall control.

(d) The Condominium Documents represent the results of bargaining and negotiations among the Declarant and the proposed purchasers of the Commercial Unit, Residential Unit and Parking Unit and a combined drafting effort. Consequently, any Applicable Law requiring that ambiguous or conflicting terms be construed against the party whose attorney prepared the Condominium Documents shall not apply.

(e) The word "include" and similar terms such as "included" and "including" used in the Condominium Documents are terms of enlargement and shall not imply any restriction or limitation unless the context clearly otherwise requires.

(f) Unless otherwise expressly stated in the Condominium Documents, all matters requiring action, consent or approval by the Board of Directors shall require the unanimous consent of the members of the Board of Directors (such action, consent or approval shall likewise require the unanimous consent of all Unit Owners to the extent such action, consent or approval is undertaken by the Council of Unit Owners); *provided, however*, that any action taken by the Board of Directors (or Council of Unit Owners to the extent such action or decision is undertaken by the Council of Unit Owners ) arising from a Unit Owner's failure to perform a monetary obligation under the Condominium Documents (such as, by way of example, a Unit Owner's failure to pay assessments pursuant to Section 5.1 [Determination of General Common Expenses and Assessments Against Unit Owners] or Section 5.2 [Payment of Condominium Assessments] of the Bylaws) or arising from a Unit Owner's violation of any obligation, condition, or covenant set forth in the Condominium Documents that would have an adverse and material impact on any other Unit Owner, its tenants, subtenants, licensees, employees, contractors, agents, customers or invitees shall only require the majority consent of the members of the Board of Directors (such action or decision shall likewise require the majority consent of all Unit Owners to the extent such action or decision is undertaken by the Council of Unit Owners).

**Section 11.4. Real Estate Taxes and Assessments.** Each Unit Owner shall pay or cause to be paid, prior to delinquency, all real estate taxes, ad valorem taxes, assessments, water and sewer rents or charges, if any, and all other charges, if any, special or otherwise, foreseen or unforeseen, levied, imposed on or assessed upon or with respect to such Unit Owner's Unit and the buildings and Improvements located thereon, or any part thereof, by any public or quasi-public authority having jurisdiction (hereinafter collectively referred to as "**Taxes**"). Nothing contained in this Section shall prevent any Unit Owner from prosecuting an action to secure a reduction or abatement of any Taxes with respect to its Unit in any manner as such Unit Owner elects; *provided, however*, that no Unit Owner shall allow any items so contested to remain unpaid for a length of time as shall permit any portion of the Common Elements, or the lien thereon created by such items, to be foreclosed or sold by any governmental authority for the non-payment thereof. At the time any such action is concluded (allowing for appeal to the highest appellate court), the Unit Owner instituting such action shall promptly pay all Taxes determined to be owing together with all interest, penalties, charges, and costs due thereon.

**Section 11.5. Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof unless such deletions shall adversely and materially alter the operation of the Condominium.

**Section 11.6. Captions.** The captions used in this Declaration are included solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the provisions of this Declaration.

**Section 11.7. Amendments.** This Declaration may be amended or terminated only with the express written consent of all members of the Board of Directors. Any amendment to or termination of this Declaration shall not become effective until such time as it has been recorded among the Land Records. Upon the completion of the construction of the improvements within the Property, the Board of Directors shall promptly amend the Condominium Documents to describe the Units and the Common Elements "as built," to identify the location of the Common Elements and any easements not previously granted by the Condominium Documents necessary for the operation of the Units and the Common Elements and to reallocate the Percentage Interests based upon the "as-built" square footage of the Units measured by the Board of Directors to include the total number of square feet of floor area, excluding uncovered steps, interior egress stairs, uncovered porches, rooftop mechanical equipment enclosures, mechanical shafts and elevator shafts; but, including cellars or basements designed and available for tenant use or occupancy. All measurements shall be made between exterior faces of walls or the centerline of walls of abutting buildings, foundations, piers or other means of support. The Board of Directors may engage the services of an architect or surveyor licensed by the State of Maryland to measure the as built dimensions for purposes of amending the Condominium Documents. The cost of such Architect or surveyor shall be a General Common Expense. If requested of the Board of Directors, each Unit Owner shall promptly execute and deliver an amendment to the Condominium Documents and provide such further assurances as may be deemed reasonably necessary or desirable by the Board of Directors.

**Section 11.8. Applicable Law.** This Declaration shall be governed by and construed according to the laws of the State of Maryland.

**Section 11.9. Effective Date of Declaration.** This Declaration shall become effective when it and the Condominium Plats have been recorded among the Land Records.

**Section 11.10. Notices.** Except as otherwise expressly required in this Declaration or the Bylaws, all notices, requests, demands, bills, statements, or other communications under this Declaration and the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or when delivered by certified mail, return receipt requested, or by any other delivery or courier service that can provide tracking information regarding the delivery of such notice, as follows: (a) if to a Unit Owner, at the address provided by the Unit Owner to the Council of Unit Owners, (b) if to the Council of Unit Owners or the Board of Directors, at the principal office of the Council of Unit Owners, or (c) if to a Mortgagee, to the address provided by the Mortgagee to the Council of Unit Owners. If delivery of any notice as provided in this Section is refused, the date of such refusal shall be deemed to be the date of delivery.

**Section 11.11. Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawfully void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the members of the 108<sup>th</sup> United States Congress as of January 20, 2004.

**Section 11.12. Exhibits.** All exhibits attached to this Declaration are hereby incorporated into and made a part of this Declaration.

**Section 11.13. Excusable Delay.** Whenever performance is required of the Council of Unit Owners or one or more Unit Owners (the "**Performing Party**") under the terms of the Condominium Documents, such Performing Party shall use of commercially reasonable efforts to perform and take all necessary measures in good faith to effect the necessary or required performance; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, adverse and unusual weather conditions not reasonably anticipated, war, acts of terrorism, civil commotion, riots, strikes, reasonably unforeseeable government action or inaction, damage to work in progress by reason of fire or other casualty, or any reasonably unforeseeable and unavoidable cause beyond reasonable control of the Performing Party, including the default of or delay by another Performing Party in performing its obligations under the Condominium Documents, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused (an "**Excusable Delay**"). Notwithstanding the foregoing, lack of funds or causes resulting from lack of funds shall not be deemed to be a cause beyond the control of a Performing Party. The provisions of this Section shall not operate to excuse any Unit Owner from the prompt payment of any monies required by the Condominium Documents. Any Performing Party claiming an Excusable Delay shall provide the other parties written notice of the Excusable Delay within five (5) business days after the Performing Party obtains actual knowledge of the Excusable Delay event. The notice must describe the Excusable Delay event, the anticipated duration of the Excusable Delay (if known), and actions to be taken by the Performing Party to end the Excusable Delay and minimize its impact (to the extent the same are feasible through the use of commercially reasonable efforts) by the Performing Party.

**Section 11.14. Deadlock; Arbitration.**

(a) If, (i) pursuant to the Condominium Documents the unanimous consent or agreement of all of the Unit Owners or of all of the members of the Board of Directors is required (or if pursuant to the Condominium Documents the consent or agreement of two (2) Unit Owners is required to arrive at an unanimous decision), and the same is not forthcoming within thirty (30) days, (a "deadlock"), or (ii) there is any dispute or disagreement by or among any of the Unit Owners and/or the Board of Directors relating to any matters addressed in the Condominium Documents, except matters pertaining to any violation or alleged violation (made in good faith) of the Condominium Documents, the matter will be submitted to binding arbitration in accordance with the provisions of this Section 11.14 unless the Unit Owners and/or the Council of Unit Owners mutually otherwise agree. To the extent that such disputes or disagreements relate to matters pertaining to any violation or alleged violation (made in good faith) of the Condominium Documents, such matters shall be governed by Section 11.3(a) hereof, unless the applicable Unit Owners and/or the Council of Unit Owners mutually agree to arbitrate such matter, in which event the arbitration provisions of this Section 11.14 shall apply. In the event of a deadlock or a dispute or disagreement governed by this Section 11.14, either by the terms hereof or by the mutual agreement of the parties, any party may initiate arbitration to resolve the deadlock, dispute or disagreement by providing written notice of such desire to the affected Unit Owners and/or the members of the Board of Directors, as applicable. The Unit Owners and/or the Board of Directors, as applicable, shall have a period of ten (10) calendar days following the date notice is given to agree on a single arbitrator to resolve the deadlock, dispute or disagreement and if they fail to do so then the arbitrator shall be determined by application to JAMS (or similar alternative dispute resolution services provided by retired or former judges experienced with arbitration, settlement and private judging if JAMS ceases to exist), in which event the arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (or the arbitration rules and proceedings of such similar dispute resolution service if JAMS ceases to exist). The costs of the arbitration shall be borne as directed by the arbitrator pursuant to the applicable arbitration rules and procedures. The arbitrator shall deliver his decision, in writing, to all parties involved in the deadlock, dispute or disagreement, pursuant to the applicable arbitration rules and procedures. The decision of the arbitrator shall be final and binding on the parties thereto and a judgment on the arbitrator's decision may be entered by any court having jurisdiction.

(b) Unless the parties to an arbitration otherwise agree, a decision by the arbitrator shall be rendered within the time prescribed by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Except in the case of force majeure, the arbitrator's failure to issue a decision within ten (10) days following the expiration of such prescribed time period shall entitle any party to the arbitration to seek any other relief available in equity or law.

***Section 11.15. Sub-Condominiums and Unit Subdivision.***

(a) The provisions of this Section shall apply to any separate condominium that may be established with respect to any Unit (a "**Sub-Condominium**"). The units established under any Sub-Condominium shall not be deemed a "Unit" under this Condominium (i.e., Rockville Town Square Block 5 Condominium). Unless expressly provided otherwise in the Condominium Documents, neither shall any owner of a unit in a Sub-Condominium, in such capacity, be deemed a "Unit Owner" under this Declaration. All rights and obligations of a Unit Owner under the Condominium Documents with respect to any Unit that is subjected to a Sub-

Condominium regime shall be exercised by the council of unit owners of the Sub-Condominium or its designee. No rights and obligations of a Unit Owner under the Condominium Documents for this Condominium shall be exercised by the owner of any unit in a Sub-Condominium, in its capacity as such unit owner. All assessments and other charges of the Condominium applicable to a Unit that has been subjected to a Sub-Condominium regime shall be the obligation of the council of unit owners for such Sub-Condominium. Such council of unit owners shall not withhold nor decrease payment of any assessments or other charges owing to the Condominium because of delinquent or insufficient payment of assessments by the unit owners of the Sub-Condominium or other shortfall in the budget of the Sub-Condominium, or for any other reason. Notwithstanding the foregoing provisions of this Section or any other provisions of the Condominium Documents, the Council of Unit Owners for this Condominium shall have a lien against each unit within any Sub-Condominium for any assessments or other charges owing but not paid to this Condominium by the council of unit owners for the Sub-Condominium. Such lien may be enforced and foreclosed in such manner as may from time to time be provided in the Maryland Condominium Act and the Maryland Contract Lien Act. The Council of Unit Owners, the Board of Directors, and the Condominium Managing Agent may exercise all rights and remedies available under the Condominium Documents and Applicable Law against any unit owner in a Sub-Condominium for (i) non-payment of assessments in the event that the council of unit owners for such Sub-Condominium fails to pay any assessments or other charges owing to this Condominium, or (ii) any violation of the Condominium Documents by such unit owner in a Sub-Condominium.

(b) In addition to establishing a Sub-Condominium described in Section 11.15(a) above, any Unit Owner may subdivide its Unit into two (2) or more sub-units (such units resulting from such subdivision, excluding the original Unit that is so subdivided, are hereinafter referred to as a "**Sub-Unit**") *provided, however*, that notwithstanding such subdivision, (i) the original Unit that is so subdivided shall continue to be treated as a single Unit for purposes of this Declaration, (ii) no Sub-Unit shall be treated as a separate condominium unit under this Declaration or the Maryland Condominium Act nor have any separate rights otherwise provided under the Maryland Condominium Act, (iii) no owner of a Sub-Unit shall be deemed a separate "Unit Owner" under this Declaration, and (iv) no owner of a Sub-Unit shall have any direct exercisable rights under the Condominium Documents. Any and all rights and obligations of an owner of a Sub-Unit, including, but not limited to, any obligation for assessments and other charges allocable to a Unit that has been subdivided, shall be solely in accordance with the specific arrangement by and between the Unit Owner of the Unit that is subdivided and the owner of such Sub-Unit. In addition, it shall be a condition of any subdivision of a Unit that the original Percentage Interest and vote appurtenant to such Unit remain unchanged and shall be allocated between or among the resulting Sub-Units as agreed to by the unanimous consent of the owners of such Sub-Units and that such subdivision does not have a material and adverse impact on the Condominium or other Unit Owners. Any Unit subdivision shall be subject to the prior consent of the members of the Board of Directors, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Board of Directors may attach reasonable conditions to its approval of a Unit subdivision, provided such conditions reasonably relate to any additional expenses, services or other issues associated with the subdivision of a Unit.

**Section 11.16. Reasonable Approval or Consent Standard.** Except as otherwise specifically provided in this Declaration, where the Board's or any Unit Owner's approval or consent is required under the Condominium Documents, such approval or consent shall be in writing and such party whose approval or consent is required must not unreasonably withhold, delay or condition the rendering of such approval or consent.

**Section 11.17. Good Faith and Fair Dealing.** Except only in those circumstances where the Board or a Unit Owner is entitled to exercise its rights or perform its obligations under the Condominium Documents in its sole and absolute subjective discretion, in exercising any rights or performing any obligations under the Condominium Documents or in addressing any issues raised by a Unit Owner, the Board and/or the Unit Owners, as applicable, shall exercise such rights, perform such obligations or address such issues raised by a Unit Owner in good faith and in fair dealing.

**Section 11.18. Waiver.** Waiver of any requirements of the Condominium Documents by any party hereto may only be granted by the waiving party pursuant to a formal written waiver executed by the waiving party. Failure of any party to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other rights, nor shall it be effective unless in writing and signed by the waiving party.

**Section 11.19. Definitions.** Capitalized terms in this Declaration have the meanings ascribed in Article 1 [Definitions]. All other terms have common meanings unless they are terms of art used in the proper context.

**Section 11.20. Time of the Essence.** The parties acknowledge and agree that time is of essence in the performance of their respective obligations under the Condominium Documents.

**Section 11.21. No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in the Condominium Documents is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture among any of the Unit Owners.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed and delivered in its name and on its behalf as of this \_\_\_\_ day of \_\_\_\_\_, 2005.

**RTS Residential Block 5, LLC,**  
A Delaware Limited Liability Company

**By: RTS-RD Rockville, LLC,**  
A Delaware Limited Liability Company,  
Sole Member and Manager

**By: RD Rockville, LLC,**  
A Maryland Limited Liability Company,  
Manager

**By: RD Maryland Avenue Limited  
Partnership,**  
A Maryland Limited Partnership,  
Sole Member and Manager

**By: RD Commerce Street, LLC**  
A Maryland Limited Liability Company,  
General Partner

**By: S.J. Ross Associates, Inc.,**  
A Maryland Corporation,  
Manager

By: \_\_\_\_\_  
Scott J. Ross, President

\* \* \*

STATE OF MARYLAND

\*

\* to wit:

\*

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Scott J. Ross, known to me (or satisfactorily proven) to be the President of S.J. Ross Associates, Inc., the manager of RD Commerce Street, LLC, the general partner of RD Maryland Avenue Limited Partnership, the sole member and manager of RD Rockville, LLC, the manager of RTS-RD Rockville, LLC, the sole member and manager of RTS Residential Block 5, LLC, and that such person, in such capacity and being authorized so to do, executed the foregoing and annexed Declaration for Rockville Town Square Block 5 Condominium for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

\* \* \*

**ATTORNEY CERTIFICATION**

I HEREBY CERTIFY that this Declaration was prepared by me or under my supervision, and that I am an attorney duly licensed to practice before the Court of Appeals of Maryland.

\_\_\_\_\_  
Roger D. Winston



## **EXHIBIT A**

### **Legal Description of the Property**

**EXHIBIT B**

**Bylaws of the Condominium  
(Attached)**

B-1

**EXHIBIT C**  
**Condominium Plats**  
**(Attached)**

C-1

## EXHIBIT D

### Schedule of Percentage Interests and Vote

Percentage Interests of All Unit Owners in General Common Elements and General Common Expenses and of the Vote in the Council of Unit Owners:

<u>Unit Designation</u>	<u>Estimated Square Feet</u>	<u>Percentage Interest</u>	<u>Vote</u>
Commercial Unit	_____	33%	1
Residential Unit	_____	33%	1
Parking Unit	_____	34%	1
<b>Total</b>		100%	

Pursuant to Section 11.7 of this Declaration, upon completion of the initial construction of the improvements within the Property, the Percentage Interests will be promptly reallocated as necessary based upon the "as-built" square footage of the Units measured by the Board of Directors in accordance with the then current standards adopted by the Building Owners and Managers Association International or its successor.

## **EXHIBIT E**

### **Schedule of Alternative Percentage Allocations, Special Maintenance Items and Special Maintenance Expenses (Attached)**

**BYLAWS**  
**OF**  
**ROCKVILLE TOWN SQUARE BLOCKS 1 AND 2 CONDOMINIUM**

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**Bylaws of**  
**ROCKVILLE TOWN SQUARE BLOCKS 1 AND 2 CONDOMINIUM**

**ARTICLE 1**  
**GENERAL PROVISIONS**

**Section 1.1. The Condominium.** The Condominium has been established by subjecting the Property to a condominium regime pursuant to the Maryland Condominium Act. These Bylaws are attached to and made part of the Declaration as Exhibit "B" and are intended by Declarant to set forth, among other things, a plan by which the affairs of the Condominium shall be administered and governed by the Council of Unit Owners and its Board of Directors pursuant to the Maryland Condominium Act and the Condominium Documents.

**Section 1.2. Applicability of Bylaws.** These Bylaws are applicable to the Council of Unit Owners. All present and future Unit Owners, lessees, Mortgagees and occupants of Units, or any other persons or entities who may use the Condominium or the facilities of the Condominium in any manner, are subject to the Condominium Documents and the Maryland Condominium Act. The acceptance of a deed of conveyance, articles of transfer, or other means of conveying legal title to a Unit shall constitute an agreement by the grantee that it accepts, ratifies, and will comply with the Condominium Documents.

**Section 1.3. Governing Body.** The name of the governing body of the Condominium is the Council of Unit Owners of Rockville Town Square Blocks 1 and 2 Condominium. The powers and duties of the Council of Unit Owners shall generally be exercised by the Board of Directors in accordance with these Bylaws.

**Section 1.4. Office.** The initial office of the Condominium, the Council of Unit Owners and the Board of Directors shall be c/o Federal Realty Investment Trust, 1626 East Jefferson Street, Rockville, Maryland 20851-4041 Attention: Legal Department, or at such other place as may be designated from time to time by the Board of Directors.

**Section 1.5. Definitions.** Capitalized terms used herein without definition shall have the meanings specified for such terms in the Declaration or, if not defined in the Declaration, the meanings specified for such terms in the Maryland Condominium Act.

**ARTICLE 2**  
**COUNCIL OF UNIT OWNERS**

**Section 2.1. Purpose and Status.** The Council of Unit Owners of Rockville Town Square Blocks 1 and 2 Condominium (the "**Council of Unit Owners**") shall be an unincorporated entity and shall have as its members all of the Unit Owners. For all purposes, the Council of Unit Owners shall act merely as an agent for the Unit Owners as a group. The powers and duties of the Council of Unit Owners shall include, without limitation, establishing the



means and methods of collecting assessments and charges for General Common Expenses and arranging for the management of the Common Elements. Except as to those matters which the Maryland Condominium Act or the Condominium Documents specifically require to be decided by the vote of the members of the Council of Unit Owners, the foregoing responsibilities shall be exercised exclusively by the Board of Directors or, if authorized by the Board of Directors, by the Condominium Managing Agent, as more particularly set forth in Article 3 of these Bylaws.

**Section 2.2. Meetings.** Meetings of the Council of Unit Owners shall be held only as determined from time to time by the Board of Directors. The President shall call a special meeting of the Council of Unit Owners if so directed by resolution of the Board of Directors or upon request by a Unit Owner. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 2.3. Place of Meetings.** Meetings of the Council of Unit Owners shall be held at such suitable place reasonably convenient to the Unit Owners as may be designated by the Board of Directors or the President in the notice of the meeting.

**Section 2.4. Notice of Meetings.**

(a) The Board of Directors or President shall notify all Unit Owners of any meeting of the Council of Unit Owners at least ten (10) but not more than ninety (90) days prior to such meeting.

(b) Notice shall be deemed given pursuant to this Section 2.4 and Section 2.5 hereinbelow when it is (i) personally delivered to a Unit Owner, (ii) mailed by certified mail, return receipt requested to a Unit Owner, or (iii) delivered by overnight courier, with delivery confirmed, to the addresses as reflected on the then-current roster of Unit Owners maintained by the Council of Unit Owners. The request that there be prior notice of such meeting may be waived upon the declaration of an emergency by the entity or person calling the meeting provided that a good faith effort to effectuate prior notice has been made. Such notice shall specify the time, date, and place of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 2.5. Quorum and Adjournment of Meetings.** Except as may be otherwise provided in these Bylaws, the presence in person or by proxy of all Unit Owners shall be required to constitute a quorum at all meetings of the Council of Unit Owners. If, however, such quorum shall not be present or represented at any meeting, the Unit Owners present at such meeting in person or by proxy may adjourn and recess the meeting and at such adjourned meeting the quorum requirement shall be reduced to Unit Owners representing a majority of the Units, provided (i) a written notice of the adjourned meeting is given to all Unit Owners in the manner specified in Section 2.4 hereinabove at least seven (7) business days prior to the adjourned meeting and (ii) such notice states the reduced quorum requirement for such meeting. A Unit Owner may participate in a meeting by means of a conference telephone call or similar communications equipment by means of which all persons participating in a meeting can speak

to and hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

**Section 2.6. Conduct of Meetings.** Unless otherwise designated by the Unit Owners, the President shall preside over meetings of the Council of Unit Owners and the Secretary shall keep the minutes of the meeting and record in a minutes book all resolutions adopted at the meeting, votes taken, and all other transactions occurring at the meeting. The then current edition of Robert's Rules of Order, Newly Revised, shall govern the conduct of all meetings of the Council of Unit Owners when not in conflict with the Maryland Condominium Act or the Condominium Documents.

**Section 2.7. Voting.**

(a) Voting at all meetings of the Council of Unit Owners or for any other purposes shall be based upon one (1) vote per Unit.

(b) Except as otherwise expressly provided in the Condominium Documents, a unanimous vote of all Unit Owners is required to adopt decisions at any meeting of the Council of Unit Owners. Further, whenever the Condominium Documents provide that any action or decision of the Board of Directors requires the consent of all members of the Board of Directors, such action or decision shall likewise require the unanimous consent of all Unit Owners to the extent such action or decision is undertaken by the Council of Unit Owners, except as otherwise set forth in Section 11.3 of the Declaration.

(c) No Unit Owner may vote at any meeting of the Council of Unit Owners or have the director appointed by it participate on the Board of Directors or as an Officer of the Council of Unit Owners if the Unit Owner remains more than sixty (60) days delinquent in the payment of bona fide financial obligations to the Council of Unit Owners; provided, however, that such Unit Owner has been provided a notice of such delinquency and an opportunity to cure the same in accordance with Section 7.2(c)(ii) of these Bylaws.

**Section 2.8. Proxies.** A vote by a Unit Owner at a meeting of the Council of Unit Owners may be cast in person or by proxy. All proxies shall conform with Applicable Law (including laws applicable to documents conveyed by electronic transmission) and shall be duly executed in writing, dated, signed by a duly authorized person on behalf of the Unit Owner granting the proxy (but need not be sealed, witnessed or acknowledged), and shall be filed and verified by the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance of fee title of a Unit by its Unit Owner. Unless otherwise provided in the proxy, no proxy shall be valid after six (6) months from its date. A copy, facsimile transmission, or other reproduction of the writing or transmission may be substituted for the original writing or transmission for any purpose for which the original transmission could be used.

**ARTICLE 3**  
**BOARD OF DIRECTORS**

**Section 3.1. Powers and Duties.** The Board of Directors shall have, by delegation, those powers and duties given to the Council of Unit Owners pursuant to the Maryland Condominium Act except for those powers and duties that under the Maryland Condominium Act or the Condominium Documents are expressly required to be exercised and done by or delegated to or reserved for the Council of Unit Owners. If all members of the Board of Directors shall resign or if the Board of Directors shall otherwise cease to exist or function, all powers and authority of the Board of Directors shall revert to the Council of Unit Owners, exercisable by the individual Unit Owners. In addition to the duties imposed by these Bylaws or by any resolution of the Board of Directors that may hereafter be adopted, the Board shall on behalf of the Council of Unit Owners:

(a) Prepare and adopt an annual budget, including the assessments of each Unit Owner for General Common Expenses, in accordance with Section 5.1 of these Bylaws and for Alternative Percentage Allocations and Special Maintenance Expenses in accordance with Section 3.8 of the Declaration.

(b) Assess Unit Owners to defray the costs and expenses related to the maintenance and operation of the Common Elements and other portions of the Condominium for which the Council of Unit Owners is responsible and establish the means and methods of collecting such assessments from the Unit Owners and the period of the installment payment of the Annual Assessment for General Common Expenses in accordance with Section 5.1 of these Bylaws and in accordance with Section 3.8 of the Declaration regarding Alternative Percentage Allocations and Special Maintenance Expenses.

(c) Provide for the operation, care, repair, upkeep, replacement and maintenance of the Common Elements and any other portion of the Condominium for which the Council of Unit Owners is responsible, including any additions, alterations, renovations, restorations, replacements or improvements to the Common Elements or to any other portion of the Condominium for which the Council of Unit Owners is responsible.

(d) Designate, hire and dismiss the personnel necessary for the operation, care, repair, upkeep, replacement and maintenance of the Common Elements and for any other portion of the Condominium for which the Council of Unit Owners is responsible and, where appropriate, provide for the compensation of such personnel and for the purchase or lease of equipment, supplies and material to be used by such personnel in the performance of their duties.

(e) Collect Annual Assessments and Special Maintenance Expenses from the Unit Owners, deposit the proceeds thereof in interest bearing bank depositories designated by the Board of Directors and use the proceeds to carry out the administration of the Condominium.

(f) Adopt and amend Rules; *provided, however*, that such Rules (i) shall not be in conflict with the Maryland Condominium Act or the Condominium Documents and (ii) are promulgated in accordance with Section 4.1 of the Declaration.

(g) Open bank accounts on behalf of the Council of Unit Owners and designate the signatories thereon.

(h) Enforce by legal means the provisions of the Declaration, these Bylaws and the Rules (which Declaration, Bylaws and Rules shall be enforced in a uniform and non-discriminatory manner), act on behalf of the Unit Owners with respect to all matters arising out of any condemnation or eminent domain proceeding affecting the Common Elements, and notify the Unit Owners of any litigation (or threat of litigation), arbitration or mediation against the Council of Unit Owners.

(i) Obtain and carry insurance against casualties and liabilities, pay when due the premiums for any such insurance and adjust and settle any claims under such insurance policies, all in accordance with the requirements of the Condominium Documents.

(j) Pay the cost of all services approved by the Board of Directors that are rendered to or on behalf of the Council of Unit Owners and not billed to individual Unit Owners or otherwise provided for in Sections 5.1 and 5.2 of these Bylaws.

(k) In accordance with the Maryland Condominium Act, keep books and records with detailed accounts in chronological order of the receipts and expenditures affecting the Common Elements, and the administration of the Common Elements, specifying the expenses of maintenance, repair and replacement of the Common Elements and any other expenses incurred that are the responsibility of the Council of Unit Owners. Such books, accounts, records and vouchers accrediting the entries therein shall be available for examination by the Unit Owners, their attorneys, accountants, Mortgagees and authorized agents during normal business hours on business days at the times and in the manner reasonably established by the Board of Directors. All books and records shall be kept in a manner verifiable upon an audit. Such books and records shall be subjected to an audit within one hundred twenty (120) days after the close of the prior fiscal year by a qualified independent auditor retained by the Board of Directors who shall not be a resident of the Condominium or a Unit Owner or a tenant, employee or agent of or otherwise affiliated with a Unit Owner. The cost of such audit shall be a General Common Expense. Upon written request, such audit shall be made available to any Mortgagee. In addition to the annual audit provided for above, any Unit Owner may, from time to time and at such Unit Owner's expense, undertake an audit of the books and records of the Council of Unit Owners after reasonable notice to the Board. The Board, on behalf of the Council of Unit Owners, shall also keep current copies (in print or electronic format) of the Declaration, these Bylaws, the Rules, and books and records available for examination during normal business hours by the Unit Owners, their attorneys, accountants, Mortgagees and authorized agents. Any party provided access to the audit or books and records of the Council of Unit Owners shall be obligated to keep such information confidential, unless otherwise agreed by the Board of Directors or unless otherwise required by Applicable Law. With respect to any such information obtained by the Declarant, and to the extent permitted by Section 10-617 of the State Government Article of the Annotated Code of Maryland, the Declarant shall keep such

information confidential and shall deny inspection of the same as materials containing trade secrets confidential commercial information or confidential financial information.

(l) If requested by a Mortgagee, notify such Mortgagee of a Unit of any material default under the Condominium Documents by the Unit Owner of such Unit if such default continues for more than fifteen (15) days after written notice to the defaulting Unit Owner of such default, and provide the Mortgagee with a reasonable opportunity to cure such default. Any Mortgagee desiring such Notice and right to cure shall be required to provide the Council of Unit Owners with an address for such notification.

(m) Borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep, repair, replacement, and maintenance of the Common Elements and other areas of the Condominium for which the Council of Unit Owners is responsible. To the extent reasonably achievable, the applicable loan documents shall provide that if any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subsection (m) is not repaid by the Council of Unit Owners, a Unit Owner who pays to the creditor a percentage of the total amount due equal to such Unit Owner's Percentage Interest in the Condominium shall be entitled to obtain from the creditor a release in recordable form of any judgment or other lien that such creditor shall have filed or shall have the right to file against such Unit Owner's Unit, and the Council of Unit Owners shall not be entitled to assess the Unit for payment of any remaining amount due such creditor.

(n) Grant and accept easements and licenses through or over the General Common Elements in accordance with Section 11-125 of the Maryland Condominium Act.

(o) Sue and be sued, complain and defend, settle claims or intervene in litigation, administrative proceedings, arbitration, mediation or any other form of action or suit on behalf of the Council of Unit Owners.

(p) Exercise for the Council of Unit Owners all other powers, duties and authority vested in or delegated to the Council of Unit Owners pursuant to the Maryland Condominium Act and the Condominium Documents, unless expressly required to be exercised solely by the Council of Unit Owners.

**Section 3.2. Number of Directors; Unanimous Action; Interests of Units.** There shall be three (3) members of the Board of Directors. One (1) Director shall be appointed by the Commercial Unit Owner, one (1) Director shall be appointed by the Residential Unit Owner and one (1) Director shall be appointed by the Parking Unit Owner. Except as may be otherwise expressly provided in the Condominium Documents, all actions by the Board of Directors shall require the unanimous consent of all Directors. In the event of the subdivision of a Unit in accordance with Section 11-107(d) of the Maryland Condominium Act (and subject to the terms and requirements of Section 11.15 of the Declaration), there shall be no increase in the number of Directors and the majority consent of the owners of the subdivided Unit shall be required for the appointment of the Director that would have been appointed by the Unit Owner but for the subdivision. In considering matters that affect solely the interest of any particular Unit and

subject to comply with and carrying out the fiduciary obligations of the Board of Directors, the Board of Directors shall provide reasonable deference to the position of the member of the Board of Directors representing such Unit.

**Section 3.3. Qualification of Directors.** No Unit Owner or any person affiliated with a Unit Owner shall be appointed as a Director or continue to serve as a Director if the Unit Owner remains more than sixty (60) days delinquent in the payment of bona fide financial obligations to the Council of Unit Owners provided; however, that such Unit Owner has been provided a notice of such delinquency and an opportunity to cure such delinquency in accordance with Section 7.2(c)(ii) of these Bylaws.

**Section 3.4. Term, Removal or Resignation of Directors.** A Director shall serve until such Director's death, incapacity, removal or resignation. Any Director may be removed at any time, with or without cause, upon written notification to the Council of Unit Owners by the Unit Owner that appointed such Director. A Director may resign at any time by giving written notice to the President or Secretary. Resignation of a Director is effective when delivered to the President or Secretary or at such later time specified in the notice.

**Section 3.5. Vacancies.** Vacancies on the Board of Directors shall be filled by the Unit Owner entitled to appoint the replacement Director. Such Unit Owner shall provide the Council of Unit Owner with written notice of any newly appointed Director.

**Section 3.6. Meetings of Directors.**

(a) **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Board of Directors, but not less than once per year unless otherwise agreed to by the consent of all Directors.

(b) **Special Meetings.** Special meetings of the Board of Directors may be called by the President on three (3) business days confirmed notice to each Director, given personally or by mail, facsimile or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice upon the written request of any member of the Board of Directors. Such notice may be waived upon the declaration of an emergency by the entity or person calling the meeting provided that a good faith effort to effectuate notice has been made.

(c) **Notice.** All regular meetings of the Board of Directors or any committee established by the Board of Directors shall be held only upon regularly scheduled and established dates or periods at such time and place as shall have been made known to all Directors and all Unit Owners, or upon not less than ten (10) days notice to the Directors and not less than ten (10) days nor more than ninety (90) days notice to the Directors and the Unit Owners. Notices to Unit Owners shall be sent in accordance with Section 2.4(b) of these Bylaws.



(d) **Waiver of Notice.** Any Director may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director, in person or by a conference telephone call (or similar communications equipment by means of which all persons participating in a meeting can speak to and hear each other at the same time), at any meeting of the Board of Directors, shall constitute a waiver of notice by such Director of the time, place and purpose of such meeting. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

(e) **Quorum of Board of Directors.** At all meetings of the Board of Directors, attendance by all of the Directors shall be required to constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn or recess the meeting from time to time and at any such adjourned meeting the quorum requirement shall be reduced to a majority of the Directors, provided (i) a written notice in accordance with Section 3.6(c) of the Bylaws, of the adjourned meeting is given to all Directors at least seven (7) business days prior to the adjourned meeting and (ii) such notice states the reduced quorum requirement for such meeting. A Director may participate in a meeting by means of conference telephone call (or similar communications equipment by means of which all persons participating in a meeting can speak to and hear each other at the same time). Participation by such means shall constitute presence in person at the meeting.

**Section 3.7. Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors and the Secretary shall keep the minutes of the meeting and keep a record of all resolutions adopted at the meeting and all transactions and proceedings occurring at the meetings. The then current edition of Robert's Rules of Order, Newly Revised, shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Maryland Condominium Act or the Condominium Documents.

**Section 3.8. Compensation.** No Director shall receive any compensation from the Condominium for acting as such. Reimbursement of actual and reasonable third-party out-of-pocket expenses incurred by Directors on behalf of the Council of Unit Owners shall be permissible.

**Section 3.9. Board of Directors as Agent.** Except as otherwise provided in the Condominium Documents or the Maryland Condominium Act, the Board of Directors shall have the power to act as agent for the Unit Owners of all of the Units and for each of them to manage, control and deal with the interests of such Unit Owners in the Common Elements of the Condominium to permit the Board of Directors to fulfill all of its powers, obligations, rights, functions and duties. With the consent of all Directors, the Board of Directors shall have the power to act as agent for each Unit Owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the Condominium or the Property to: (a) adjust and settle all claims arising under insurance policies purchased by the Board of Directors pursuant to the Declaration, (b) execute and deliver releases upon the payment of

claims, and (c) act on their behalf in any condemnation proceeding or action of eminent domain pursuant to Section 11-112 of the Maryland Condominium Act insofar as the same relates to the Common Elements; provided, however, that the consent of each Mortgagee of an affected Unit shall be required with respect to such condemnation proceeding or action of eminent domain.

***Section 3.10. Liability of the Board of Directors, Officers, Committee Members; Indemnification; Defense of Claims.***

(a) The Directors, Officers, and committee members shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct, gross negligence or willful breach of fiduciary duty.

(b) The Directors, Officers, and committee members shall not be liable for the failure of any service to be obtained by the Board of Directors and paid for by the Council of Unit Owners, or for death or injury to persons or damage to property caused by the elements or by another Unit Owner or person on the Property, or resulting from electricity, gas, water, rain, dust, or sand that may leak or flow from the outside or from any part of the Property or from any other cause beyond their control, unless in each such instance such injury or damage has been caused by the Directors', Officers', or committee members' own individual willful misconduct or gross negligence.

(c) The Directors, Officers, and committee members shall have no personal liability to a Unit Owner or any other person or entity under any agreement, check, contract, deed, lease, Mortgage, instrument, or transaction entered into by them on behalf of the Board of Directors or the Council of Unit Owners in the performance of their official duties.

(d) The Directors, Officers, and committee members shall not be liable to a Unit Owner or its tenants, employees, agents, guests, customers or invitees for loss or damage caused by theft or misuse of or damage to personal property left by any Unit Owner or its tenants, employees, agents, guests, customers or invitees in a Unit or in or on the Common Elements, except for any Director's, Officer's, or committee member's own individual willful misconduct or gross negligence.

(e) The Directors, Officers, and committee members shall have no personal liability to any Unit Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them in their respective capacities as Directors, Officers or committee members, except for any Director's, Officer's, or committee member's own individual willful misconduct or gross negligence in the performance of their official duties.

(f) The Directors, Officers, and committee members shall have no personal liability arising out of the use, misuse, or condition of any buildings or other improvements located on the Property, or that might in any other way be assessed against or imputed to the Directors, Officers, or committee members as a result of or by virtue of the performance of their duties, except for any Director's, Officer's, or committee member's own individual willful misconduct, gross negligence, or willful breach of fiduciary duty.

(g) To the maximum extent permitted by Applicable Law, the Council of Unit Owners shall indemnify each Director, Officer, or committee member in such capacity against all expenses and liabilities, including court costs and reasonable attorneys' fees, reasonably incurred by or imposed upon that person in connection with any proceeding in which that person may become involved by reason of being or having been a Director, Officer, or committee member, or any settlement of any such proceeding, whether or not that person is a Director, Officer, or committee member, or any combination thereof, at the time such expenses are incurred, except in such cases where the Director, Officer, or committee member is adjudged guilty of willful misconduct, gross negligence or willful breach of fiduciary duty in the performance of that person's official duties; *provided, however*, that (i) in the event of a settlement, this indemnification shall apply only if and when the Board of Directors (with the affected person abstaining if he or she is then a Director) approves such settlement and reimbursement as being in the best interests of the Council of Unit Owners, and (ii) such indemnification with respect to any criminal action or proceeding is permitted only if such Director, Officer, or committee member had no reasonable cause or basis to believe his or her conduct was unlawful. Such right of indemnification shall not be deemed exclusive of any of the rights to which such Director, Officer, or committee member may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

(h) Complaints brought against the Council of Unit Owners, Directors, Officers, committee members, or employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Board of Directors, which shall promptly give written notice thereof to Unit Owners and such complaints shall be defended by the Council of Unit Owners. The Unit Owners and their respective Mortgagees shall have no right to participate in such defense other than through the Council of Unit Owners, unless such Unit Owner or Mortgagee is named as a defendant in such action. Complaints against one or more but less than all Unit Owners shall be defended by such Unit Owners themselves and, if the complaint relates to the Condominium, such Unit Owners shall promptly give written notice of the institution of any such suit to the Council of Unit Owners.

(i) No diminution or abatement of any Condominium assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken by the Council of Unit Owners or Board of Directors to comply with any Applicable Law or any Condominium Document.

### ***Section 3.11. Common or Interested Directors.***

(a) Each Director shall exercise such Director's powers and duties in good faith and with a view to the best interests of the Condominium. A contract or other transaction between the Council of Unit Owners and any of its Directors, or between the Council of Unit Owners and any corporation, firm, association, or other entity (including Federal Realty Investment Trust or any of its affiliates) for which any of the Directors of the Council of Unit Owners are directors or officers or have a pecuniary or other interest, is neither void nor voidable because any such Director is present at the meeting of the Board of Directors or any committee of

the Board that authorizes or approves the contract or transaction, or because such Director's vote is counted for such purpose, so long as any of the conditions specified in any of the following subsections exist:

(i) The fact of the common directorate or interest is disclosed or known to the Board of Directors or noted in the minutes, and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(ii) The fact of the common directorate or interest is disclosed or known to at least a majority of the Unit Owners, and the Unit Owners approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(iii) Regardless of disclosure to all or any of the Unit Owners, the contract or transaction is commercially reasonable to the Council of Unit Owners at the time it is authorized, ratified, approved or executed.

(b) Any common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee of the Board that authorizes, approves or ratifies any contract or transaction, and may vote at the meeting to authorize any contract or transaction with like force and effect as if such Director were not an officer or director of such other corporation, firm or Council of Unit Owners or not so interested.

**Section 3.12. Condominium Managing Agent.** The Board of Directors may select, retain and terminate the services of the Condominium Managing Agent. The initial Condominium Managing Agent shall be Federal Realty Investment Trust or any of its affiliates. Until such time as the Board of Directors shall terminate its services (or until Federal Realty Investment Trust or its affiliate resigns as Condominium Managing Agent), Federal Realty Investment Trust, or any affiliate thereof, shall be employed by the Board of Directors as the Condominium Managing Agent. Any management fee paid to the Condominium Managing Agent shall not exceed the fee charged for similar services provided by management companies for comparable facilities in the Washington, D.C. metropolitan area. Any Condominium Managing Agent employed by the Board of Directors shall have a sound reputation in the property management industry and shall be experienced in the management of mixed-use condominium projects in the Washington, D.C. metropolitan area similar to the Condominium. The Washington, D.C. metropolitan area includes Montgomery County, Maryland. For purposes of this Section 3.12, an affiliate of a party is any person or legal entity that owns, controls, is controlled by, or is under common control with such party.

(a) **Duties.** The Condominium Managing Agent shall perform such duties and services, as the Board of Directors shall direct from time to time.

(i) Such duties and services may include, without limitation, the duties listed in the following Sections of these Bylaws:

- Section 3.1(a) [prepare an Annual Budget; provided however, that the Condominium Managing Agent shall not adopt the Annual Budget]
- Section 3.1(c) [provide for the operation, care, repair, upkeep, replacement and maintenance of the Common Elements]
- Section 3.1(d) [designate, hire and dismiss personnel necessary for the operation, care, repair, upkeep, replacement and maintenance of the Common Elements]
- Section 3.1(e) [collect Annual Assessments and Special Maintenance Expenses]
- Section 3.1(i) [obtain and carry insurance against casualties and liabilities]
- Section 3.1(j) [pay the cost of all services approved by the Board of Directors]
- Section 3.1(k) [keep detailed accounts, books and records]
- Section 3.1(l) [notify a Mortgagee of a material default under the Condominium Documents by a Unit Owner]
- Section 3.1(p) [exercise for the Council of Unit Owners all powers and duties vested in or delegated to the Council of Unit Owners pursuant to the Maryland Condominium Act and the Condominium Documents]

(ii) The Board of Directors may delegate to the Condominium Managing Agent all of the powers granted to the Board of Directors under these Bylaws other than the powers set forth in the following Sections of these Bylaws:

- Section 3.1(b) [assess Unit Owners to defray the costs and expenses related to the maintenance and operation of the Common Elements]
- Section 3.1(f) [adopt and amend Rules]
- Section 3.1(g) [open bank accounts on behalf of the Council of Unit Owners]
- Section 3.1(h) [enforce by the legal means the provisions of the Declaration, Bylaws or the Rules]
- Section 3.1(m) [borrow money on behalf of the Condominium]
- Section 3.1 (n) [grant and accept easements and licenses through or over the General Common Elements]

- Section 3.1(o) [sue and be sued, complain and defend, settle claims or intervene in litigation, administrative proceedings or arbitration on behalf of the Council of Unit Owners]

(iii) The Condominium Managing Agent shall perform the obligations, duties and services delegated to it by the Board of Directors in compliance with the provisions of these Bylaws and the other Condominium Documents.

(b) **Standards.** The Board of Directors shall impose appropriate standards of performance upon the Condominium Managing Agent. Unless the Condominium Managing Agent is instructed otherwise by the Board of Directors:

- (i) an accrual method of accounting shall be employed;
- (ii) two (2) or more persons shall be responsible for handling cash to maintain adequate financial control procedures;
- (iii) cash accounts of the Council of Unit Owners shall not be commingled with any other entity's accounts;
- (iv) no remuneration shall be accepted by the Condominium Managing Agent from vendors, independent contractors or others providing goods or services to the Council of Unit Owners whether in the form of commissions, finder's fees, gifts, service fees or otherwise; any discounts received shall benefit the Council of Unit Owners;
- (v) any financial or other interest that the Condominium Managing Agent may have in any person or entity providing goods or services to the Council of Unit Owners shall be disclosed promptly to the Board of Directors;
- (vi) errors and omissions insurance and fidelity bonds in amounts declared adequate by the Board of Directors shall be maintained by the Condominium Managing Agent for the benefit of the Council of Unit Owners; and
- (vii) a monthly financial report (or other period authorized by the Board of Directors) shall be prepared for the Council of Unit Owners, and distributed to the Board of Directors.

**Section 3.13. Committees.** The Board of Directors may appoint such committees as it deems appropriate in carrying out the Board's purposes.

## **ARTICLE 4**

### **OFFICERS OF THE COUNCIL OF UNIT OWNERS**

**Section 4.1. Enumeration of Officers.** The Officers of the Council of Unit Owners shall be a President, a Vice President, a Secretary, and a Treasurer, and such other Officers as the Board may from time to time by resolution create, all of which Officers are to be elected by the

Board of Directors. The President and the Vice President shall at all times be members of the Board of Directors; the other Officers may, but need not, be members of the Board of Directors.

**Section 4.2. Election of Officers.** The election of Officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Council of Unit Owners, provided that the initial Board of Directors shall elect the first group of Officers at its first organizational meeting.

**Section 4.3. Term.** Each Officer of the Council of Unit Owners shall be elected annually by the Board and each Officer shall hold office for one (1) year or until his or her successor is duly elected and qualified, unless he or she shall sooner resign, die, or become incapacitated or shall be removed, or otherwise disqualified to serve.

**Section 4.4. Alternating Selection of President.** The President shall at all times be a Director. Each year, the office of President shall alternate among a Director appointed by the Unit Owner of the Residential Unit, the Director appointed by the Unit Owner of the Commercial Unit and the Director appointed by the Unit Owner of the Parking Unit. The first President shall be a Director appointed by the Unit Owner of the Residential Unit.

**Section 4.5. Special Appointments.** The Board may elect such other Officers as the affairs of the Council of Unit Owners may require, each of whom shall hold office for such period, have such authority, and perform such duties and obligations as the Board may from time to time determine.

**Section 4.6. Resignation and Removal.** Any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be required to make it effective

**Section 4.7. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

**Section 4.8. Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person and the offices of Vice President and assistant secretary may be held by the same person, but in no event shall the same Officer execute, acknowledge or verify any instrument in more than one capacity, if such instrument is required by Applicable Law or the Condominium Documents to be executed, acknowledged or verified by two (2) or more Officers. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4.5 of these Bylaws [Special Appointments] and except as otherwise provided in this Section 4.8.

**Section 4.9. Duties.** Each Officer shall perform such duties as are normally associated with such office in parliamentary organizations, unless inconsistent with the Maryland

Condominium Act or the Condominium Documents, and shall perform such other duties as may be assigned to such office by resolution of the Board of Directors. The duties of the Officers include the following (any of which, that are solely of a ministerial nature, may be assigned, in whole or in part, by the Board of Directors to the Condominium Managing Agent):

(a) **President:** The President shall be the chief executive officer of the Council of Unit Owners and shall preside at all meetings of Council of Unit Owners and the Board of Directors. The President shall see that orders and resolutions of the Board of Directors are carried out and may sign and execute, on behalf of the Board of Directors, all authorized instruments and shall co-sign all checks and promissory notes authorized by the Board of Directors. The President shall perform such other duties as are from time to time assigned to the President by the Board of Directors.

(b) **Vice President:** The Vice President, at the request of the President, or in the absence of the President or during the President's inability or refusal to act, shall perform the duties and exercise the functions of the President, and when so acting shall have the powers of the President. The Vice President shall have such other powers and perform such other duties as are from time to time assigned to the Vice President by the Board of Directors or the President.

(c) **Secretary:** The Secretary shall keep the minutes of the meetings and proceedings of the Council of Unit Owners and the Board of Directors and of any subcommittees thereto. The Secretary (i) shall see that all notices by the Council of Unit Owners or President are duly given in accordance with the provisions of these Bylaws or as required by Applicable Laws; (ii) shall be custodian of the records of the Council of Unit Owners; (iii) may witness any document on behalf of the Council of Unit Owners, the execution of which is duly authorized; and (iv) shall perform all such other duties as are from time to time assigned to the Secretary by the Board of Directors or the President.

(d) **Treasurer:** The Treasurer (i) shall receive and deposit in appropriate bank accounts all moneys of the Council of Unit Owners and shall disburse such funds as directed by resolution of the Board of Directors; (ii) shall co-sign all checks and promissory notes authorized by the Board of Directors; (iii) shall keep proper books of account of the Board of Directors and the Council of Unit Owners; (iv) shall cause to be prepared an annual statement of income and expenditures for the Council of Unit Owners to be presented to the Board of Directors; and (v) shall perform such other duties as are from time to time assigned to the Treasurer by the Board of Directors or the President. Unless the Board of Directors designates another officer, the Treasurer shall be the Chief Financial Officer of the Council of Unit Owners.

**Section 4.10. Compensation.** No Officer shall receive compensation for any service rendered to the Council of Unit Owners. However, any Officer may be reimbursed for actual out of pocket expenses incurred in the performance of such Officer's official duties.

**Section 4.11. Execution of Documents.** Unless otherwise provided in a resolution of the Board of Directors: (i) all agreements, contracts, deeds, leases, checks and other instruments of the Council of Unit Owners for expenditures or obligations in excess of Two Thousand



Dollars (\$2,000.00), and all checks drawn upon reserve accounts, shall be executed by any two (2) persons designated by the Board of Directors; and (ii) all such instruments for expenditures or obligations of Two Thousand Dollars (\$2,000.00) or less, except from reserve accounts, may be executed by any one (1) person designated by the Board of Directors. Subject to the foregoing, the Condominium Managing Agent may be one of the parties designated by the Board of Directors to sign checks. Any Officer of the Council of Unit Owners may be designated by Board resolution to sign Resale Certificates on behalf of the Council of Unit Owners. Any Officer may also be designated by Board resolution to sign any amendment to subdivide a Unit or relocate boundaries between Units on behalf of the Council of Unit Owners or at the request of a Unit Owner, pursuant to Section 11-107(d) of the Act.

## **ARTICLE 5**

### **OPERATION OF THE CONDOMINIUM**

#### ***Section 5.1. Determination of General Common Expenses and Assessments Against Unit Owners.***

(a) **Fiscal Year.** The fiscal year of the Council of Unit Owners shall be January 1 through December 31 unless otherwise determined by the Board of Directors.

(b) **Preparation and Approval of Budget.**

(i) At least forty-five (45) days before the beginning of each fiscal year, the Board of Directors shall cause to be prepared and submitted to the Unit Owners a proposed budget for the next fiscal year of the Council of Unit Owners. The budget shall contain an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Condominium that are the responsibility of the Council of Unit Owners to maintain, repair and replace pursuant to the Condominium Documents. The Council of Unit Owners may also enter into agreements with a Unit Owner to maintain certain components or portions of the Unit of such Unit Owner; the costs for such maintenance shall not be a General Common Expense but shall be assessed to such Unit Owner.

(ii) The budget may also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for replacements with respect to the Common Elements and other parts of the Condominium for which the Council of Unit Owners is responsible pursuant to the Condominium Documents. At least fifteen (15) days before the beginning of each fiscal year, the Board of Directors shall adopt the budget at a meeting of the Board of Directors and shall thereafter provide each Unit Owner a copy of the budget in a reasonably itemized form that sets forth the amount of the General Common Expenses, Special Maintenance Expenses and any Special Assessment payable by each Unit Owner.

(c) **Assessment and Payment of General Common Expenses.** Except to the extent otherwise provided in the Condominium Documents, the total amount of the estimated

funds required from assessments for the maintenance, management, operation, repair and replacement of the Common Elements and any other property for which the Council of Unit Owners is responsible pursuant to the Condominium Documents shall be assessed against each Unit Owner in proportion to such Unit Owner's respective Percentage Interest and shall be due and payable monthly. Any expenses incurred by the Council of Unit Owners at the request of a Unit Owner directly related to the maintenance, management, operation, repair and replacement of such Unit Owner's Unit shall be assessed against the Owner of such Unit or a lien recorded or filed against such Owner's Unit. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners, and to each Mortgagee requesting the same, an itemized accounting of the General Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus any reserves. Any payments for General Common Expenses accumulated in excess of the amount required for actual General Common Expenses and reserves (if any) shall, at the discretion of the Board of Directors, (i) be placed in any reserve accounts, (ii) be placed in a special account to be expended solely for the general welfare of the Unit Owners, (iii) be credited according to each Unit Owner's Percentage Interest to the next periodic installments due from Unit Owners under the current fiscal year's budget, until exhausted, or (iv) distributed to the Unit Owners according to each Unit Owner's Percentage Interest. Any net shortage in General Common Expenses shall be assessed promptly against the Unit Owners in accordance with their respective Percentage Interests and may be payable in a lump sum or in installments as the Board may determine, subject to Section 5.1(d) below.

(d) **Alternative Percentage Allocation.** The Board may also allocate an Alternative Percentage Allocation for the Special Maintenance Expenses associated with the operation, maintenance, repair and replacement of certain portions of the Property, including, but not limited to those described on Exhibit E to the Declaration, Reserved General Common Elements or as otherwise determined by the Board of Directors. The total amount of the estimated funds required from assessments for the operation, maintenance, repair and replacement of the Limited Common Elements and Special Maintenance Items described on Exhibit E to the Declaration for which the Council of Unit Owners is responsible pursuant to the Condominium Documents shall be assessed against each Unit Owner in proportion to such Unit Owner's respective Alternative Percentage Allocation and shall be due and payable monthly in accordance with Section 5.1(c), above, or shall be a direct Special Maintenance Expense borne by the Unit Owner(s) who has/have been designated a beneficial interest in such Special Maintenance Item in accordance with its Alternative Percentage Allocation or as otherwise determined by the Board of Directors. Any payments for Special Maintenance Expenses accumulated in excess of the amount required for actual Special Maintenance Expenses and reserves (if any) shall, at the discretion of the Board of Directors, (i) be placed in Special Maintenance Expenses reserve accounts for designated Limited Common Elements and Special Maintenance Items, (ii) be credited according to each Unit Owner's applicable Alternative Percentage Allocation to the next periodic installments due from Unit Owners under the current fiscal year's budget, until exhausted, or (iii) distributed to the Unit Owners according to each Unit Owner's applicable Alternative Percentage Allocation. Any net shortage in Special Maintenance

Expenses shall be assessed promptly against the Unit Owners in accordance with their respective Alternative Percentage Allocations and may be payable in a lump sum or in installments as the Board may determine.

(e) **Reserves.** The Board of Directors may, in its sole discretion, build up and maintain reserves for operations (including losses due to insurance deductibles) and replacements as the same are associated with the Common Elements or other property required to be maintained by the Council of Unit Owners pursuant to the Condominium Documents. Extraordinary expenditures associated with the Common Elements or other property required to be maintained by the Council of Unit Owners not originally included in the annual budget that may become necessary during the year shall be charged first against such operating reserves, if any, unless sufficient funds to meet such expenditures are in the operating account. Except for normal maintenance expenses shown in the annual operating budget, all expenses for replacement of physical assets maintained by the Council of Unit Owners shall be charged first against such replacement reserves, if any. Unless otherwise determined by a vote of all of the Directors, any amount held as reserves shall not substantially exceed the amount reasonably required to assure the Council of Unit Owner's ability to replace components as they reach the end of their useful lives. If regular maintenance extends the useful life of components so that reserves are excessive, any excess amount shall be adjusted by reallocation to other budget items or by distribution to the Unit Owners according to each Unit Owner's Percentage Interest and/or Alternative Percentage Allocation, as applicable as the Board of Directors may determine.

(f) **Effect of Failure to Prepare or Adopt Budget.** The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay its allocable share of the Condominium assessments whenever the same shall be determined. In the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay Condominium assessments at the rate established for the previous fiscal year until a new annual or adjusted budget is adopted.

(g) **Accounts.** All sums collected by the Council of Unit Owners for Condominium assessments or from any other source may be commingled into a single fund or account.

**Section 5.2. Payment of Condominium Assessments.** Each Unit Owner shall pay assessments determined by the Board of Directors pursuant to the provisions of Section 5.1 above. No Unit Owner may be exempted from liability for such assessments by reason of waiver of the use or enjoyment of any of the General Common Elements or by abandonment of its Unit. Each assessment for General Common Expenses shall be the personal obligation of the Unit Owner who held record title to the Unit at the time the assessment became due. No Unit Owner shall be liable for the payment of any part of any assessment imposed against that Unit subsequent to the date of recordation of filing of an instrument conveying the Unit in fee simple. Prior to or at the time of any record title or beneficial interests to a Unit, all liens, unpaid charges and assessments shall be paid in full and discharged. Notwithstanding the foregoing, the purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid

assessments incurred prior to conveyance of the Unit, without prejudice to the purchaser's right to recover from the selling Unit Owner any assessments paid by the purchaser. A Unit purchaser shall not be liable for nor shall the Unit be conveyed subject to a lien for any unpaid assessments in excess of the amount set forth in any estoppel certificate contemporaneously provided to the Unit purchaser in accordance with Section 11.1 of the Declaration. A Unit Owner's voting rights may be suspended upon failure of a Unit Owner to pay Condominium assessments, provided such Unit Owner has been provided the notice and opportunity to cure described in Section 7.2(c) of these Bylaws.

**Section 5.3. Utility Charges; User Fees.** Utilities serving the Units shall be separately metered and billed to the respective Unit Owners. The costs for any utilities serving the Common Elements shall be a General Common Expense allocated pursuant to Section 5.1 of these Bylaws. To the extent permitted by Applicable Law, the Board of Directors may impose reasonable utility user fees, for the use of (a) Limited Common Elements, (b) personal property of the Council of Unit Owners, (c) for services provided by or arranged for through the Council of Unit Owners, or (d) for services provided by the Council of Unit Owners to one (1) or more, but less than all Unit Owners, including fees for utility services which are sub-metered.

**Section 5.4. Collection of Assessments and Monetary Obligations.** The Board of Directors or the Condominium Managing Agent, at the request of the Board, shall take prompt action to collect any Condominium assessments due from any Unit Owner that remain unpaid for more than the applicable cure period described in Section 7.2(c) of these Bylaws. The lien for unpaid assessments, and any monetary obligations remaining unpaid beyond the applicable cure period described in Section 7.2(c) of these Bylaws by a Unit Owner to any party to which such payment is due, may be enforced and foreclosed in such manner as may from time to time be provided in the Maryland Condominium Act and the Maryland Contract Lien Act. Any assessment, until paid, may at the election of the Board of Directors bear interest at the maximum rate permitted by Applicable Law at the time the assessment became due or, if there is no such maximum rate, at such rate as is determined by the Board of Directors. In no event, however, shall the interest rate be more than five (5) percentage points above the floating prime rate of interest set forth from time to time in the Money Rates section of *The Wall Street Journal* or, if such section is no longer published, such other publication as the Board of Directors may reasonably select. In addition, the Board of Directors may impose late charges of not to exceed five percent (5%) of the past due assessment and/or the costs of collection (including reasonable attorneys' fees) with respect to any assessment that has not been fully paid when due. Such late charges, attorneys' fees and other costs shall not exceed the permissible amounts provided for in the Maryland Condominium Act.

**Section 5.5. Statement of General Common Expenses.** Within ten (10) days after receipt of a written request, the Board of Directors or Condominium Managing Agent shall provide any Unit Owner, Mortgagee, or contract purchaser of a Unit or the beneficial interests in a Unit Owner with a written statement of all unpaid Condominium assessments due from such Unit Owner. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation and delivery.

***Section 5.6. Maintenance, Repair, Replacement and Other General Common Expenses.***

(a) **Council of Unit Owners.** The Council of Unit Owners shall be responsible for the operation, maintenance, repair and replacement of the Common Elements and for any other portion of the Condominium required to be maintained by the Council of Unit Owners pursuant to the Condominium Documents. The cost of such operation, maintenance, repair and replacement shall be charged to all Unit Owners as a General Common Expense unless otherwise provided in the Condominium Documents; *provided, however*, that any Unit Owner of a Unit to which a Limited Common Element is appurtenant or any Unit Owner who is benefited by a Reserved General Common Element and has been granted a revocable license for such Reserved General Common Element shall have the responsibility for the routine operation, maintenance, repair and replacement of those areas and all costs associated therewith in accordance with Section 5.1(d) to these Bylaws, except as otherwise determined by members of the Board of Directors. In addition, the Board of Directors may elect not to maintain, repair or replace all or a portion of the Common Elements if in the reasonable opinion of the Board of Directors such maintenance, repair or replacement was necessitated by the negligence, misuse or neglect of a Unit Owner or its tenants, agents, contractors or others with privity to such Unit Owner. In that event, the negligent Unit Owner or its tenants, agents, contractors or others with privity to such Unit Owner shall be responsible for such repair, replacement or maintenance in accordance with these Bylaws. Alternatively, if in the opinion of the Board of Directors such maintenance, repair or replacement was necessitated due to the negligence, misuse or neglect of a Unit Owner, the Council of Unit Owners may undertake such repair, maintenance or replacement and assess the negligent Unit Owner for all reasonable costs related thereto. Some or all of the foregoing responsibilities may be performed by the Condominium Managing Agent.

(b) **Payment Vouchers.** The method of approving payment vouchers for all maintenance, repairs and replacements of the General Common Elements shall be determined by the Board of Directors.

***Section 5.7. Additions, Alterations, Renovations or Improvements by the Unit Owners.***

(a) Subject to Article 10 of the Declaration, each Unit Owner shall maintain, repair and replace its Unit consistent with the First Class quality of the Condominium and the other improvements within the Rockville Town Square Project in which the Condominium is located. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials, equipment and technology that are consistent with First Class properties, or such other standards as determined by the Board of Directors.

(b) Except during the initial construction of the improvements, no Unit Owner shall (i) make any addition, modification, renovation, replacement or other alteration in or to the General Common Elements, or (ii) paint or alter any General Common Element, without the

prior written consent of the members of the Board of Directors, which consent shall not be unreasonably withheld, delayed or conditioned. No Unit Owner shall make any addition, alteration, renovation or alteration in or to a Limited Common Element or a Reserved Common Element that would have a material adverse effect on another Unit without the prior written consent of the Owner of the affected Unit. The Board of Directors shall be obligated to respond to any written request by a Unit Owner (sent by certified mail, return receipt requested) for approval of a proposed structural addition, alteration, renovation or improvement to the Common Elements within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed structural addition, alteration, renovation or improvement. Due to the complex structural design and interrelationships of the improvements, any application to the Board of Directors for a structural change to a Common Element shall include a reasonably detailed analysis of the proposed change by a qualified engineer or architect licensed by the State of Maryland. If any application to any governmental authority for a permit to make any such structural addition, alteration, renovation or improvement in or to the Common Elements requires execution by the Council of Unit Owners, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Council of Unit Owners by an authorized Officer. The review and approval by the Board of Directors shall not imply that the Board or Council of Unit Owners have evaluated the technical merits or legal sufficiency of the proposed change and neither the Board of Directors nor the Council of Unit Owners shall incur any liability to any Unit Owner, third party, contractor, subcontractor or materialman on account of such addition, alteration, renovation or improvement, or to any person having a claim for injury (including death) or damage arising therefrom.

(c) No Unit Owner shall make a structural change to a Unit or a change to any mechanical, life safety, sprinkler or fire suppression system therein (a "**Building System**") that would have an adverse and material impact on another Unit without the prior written consent of the impacted Unit Owner. No Unit Owner shall make a structural change to a Unit or to a Building System that would have an adverse and material impact on any Common Elements without the prior written consent of the members of the Board of Directors. Due to the complex structural design and interrelationships of the improvements, any structural change to a Unit or a change to any Building System that would have an adverse and material impact on another Unit or to the Common Elements shall include a reasonably detailed analysis of the proposed change by a qualified engineer. Notwithstanding anything contained in the foregoing to the contrary, changes to a Building System performed by or on behalf of a Unit Owner with all necessary building permits and which do not violate insurance requirements shall not require the prior written consent of the other Unit Owners or the Board.

(d) Except to the extent expressly limited elsewhere in the Condominium Documents each Unit Owner shall have the right to make any non-structural alterations to the interior or the exterior of its Unit that such Unit Owner deems necessary, including, without limitation, the right to install, modify or remove signage and storefront features and displays and the right to reasonably reconfigure parking spaces, aisles and access points, provided such

reconfiguration does not reduce the number or availability of parking spaces or unreasonably interfere with access to the parking spaces.

## **ARTICLE 6** **MORTGAGES**

**Section 6.1. Unit Mortgages.** Each Unit Owner may mortgage, encumber or otherwise grant a security interest in its Unit, subject to the terms and conditions of this Declaration and the Bylaws.

**Section 6.2. Notice to Board of Directors.** Each Unit Owner shall notify the Board of Directors of the name and address of any Mortgagee with respect to such Unit Owner's Unit.

**Section 6.3. Notice of Default, Casualty or Condemnation.** The Board of Directors, when giving notice to any Unit Owner of a default in paying an assessment or any other default, which remains uncured beyond the applicable cure period set forth in Section 7.2(c) of these Bylaws, shall simultaneously send a copy of such notice to the Mortgagee of such Unit. Each Mortgagee shall have the right to cure any default by its Unit Owner mortgagor within the applicable time period allotted to such Unit Owner to cure such default. Each Mortgagee shall also be promptly notified of all actions taken under Article 10 of the Declaration and of any taking in condemnation or by eminent domain and actions of the Council of Unit Owners with respect thereto. The Board of Directors shall also give Mortgagees any other notices reasonably requested by such Mortgagees.

**Section 6.4. Notice of Amendment of Condominium Documents.** The Board of Directors shall give notice to all Mortgagees (provided the name and address of the current Mortgagee has been provided to the Council of Unit Owners) at least seven (7) days prior to the date of any material amendment to the Condominium Documents and any other notices reasonably requested by a Mortgagee.

**Section 6.5. Mortgagees' Approvals.**

(a) **Unanimous Consent.** Unless Mortgagees and all Unit Owners have given their prior written approval, the Council of Unit Owners shall not: (i) change any Unit's Percentage Interest except as provided in the Maryland Condominium Act or otherwise in the Condominium Documents; (ii) except following destruction or condemnation (and subject to Article 10 of the Declaration), partition, subdivide, abandon, encumber, sell or transfer the Common Elements of the Condominium (except for the granting of easements pursuant to Section 11-125 of the Maryland Condominium Act and the Condominium Documents); (iii) except following destruction or condemnation (and subject to Article 10 of the Declaration), by act or omission withdraw the submission of any of the Property to the Maryland Condominium Act, or terminate the Condominium, (iv) modify the method of determining or collecting assessments or allocating distributions of casualty insurance proceeds or condemnation awards; (v) use insurance proceeds for losses to the Condominium for any purpose other than repair, replacement or restoration except as provided in Section 10.4 of the Declaration, or (vi) make

any amendment or modification to the Condominium Documents impairing or affecting the rights, priorities, or remedies of a Mortgagee.

(b) **Non-Material Amendments.** Any addition or amendment to the Condominium Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

(c) **Presumptive Approval.** If a Mortgagee is notified of any proposed amendment to the Condominium Documents or other matter for which it is entitled to notice as provided in the Declaration or these Bylaws (such notice to be delivered by certified mail, return receipt requested), and such Mortgagee fails to respond within thirty (30) days of receipt of such notice, such Mortgagee shall be conclusively deemed to have approved the proposed amendment or other matter for which the Mortgagee was provided notice.

## **ARTICLE 7**

### **COMPLIANCE AND DEFAULT**

**Section 7.1. Relief.** Each Unit Owner shall be governed by, and shall comply with, the Maryland Condominium Act and the Condominium Documents, as the same may be amended from time to time. In addition to the remedies provided in the Maryland Condominium Act, a default by a Unit Owner, beyond any applicable notice and cure period, shall entitle a non-defaulting Unit Owner, and also the Council of Unit Owners, acting through its Board of Directors or through the Condominium Managing Agent, to the relief described in this Article 7.

**Section 7.2. Additional Liability.** Each Unit Owner shall be liable to the Council of Unit Owners and to each other, as applicable, for the expense of all maintenance, repair or replacement rendered necessary by its acts or omissions and those of its tenants, subtenants, invitees, licensees, employees, contractors and agents, but only to the extent that such expense is not covered by the proceeds of insurance carried on behalf of, or for the benefit of, the Board of Directors or such Unit Owner. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including, without limitation, reasonable attorneys' fees incurred as a result of a failure of a Unit Owner or its guests, customers, invitees, tenants, agents or employees to comply with the Maryland Condominium Act or the Condominium Documents, may be assessed against such Unit Owner and its Unit.

(a) **Costs and Attorney's Fees.** In any proceedings arising out of any alleged default by a Unit Owner, the Council of Unit Owners shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the court.

(b) **No Waiver of Rights.** The failure of the Council of Unit Owners, the Board of Directors, any committee of the Board of Directors, or any Unit Owner to enforce any right, provision, covenant or condition that may be granted by the Condominium Documents or the Maryland Condominium Act shall not constitute a waiver of the right of any such party to enforce such right, provision, covenant or condition in the future. All rights and remedies



granted to the foregoing parties pursuant to the Condominium Documents or the Maryland Condominium Act shall be deemed to be cumulative and the exercise of any one or more of the same shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other rights and remedies that may be available under the Condominium Documents or at law or in equity.

(c) **Abating and Enjoining Violations.**

(i) Non-Monetary Violations. In addition to any other rights that may be available, the breach of any provision of the Condominium Documents or the Maryland Condominium Act shall give the Board of Directors, the Condominium Managing Agent and each non-defaulting Unit Owner the right: (1) to enter the Unit or Limited Common Element in which, or as to which, such breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist in violation of the Condominium Documents; (2) to cure any breach of the Condominium Documents; provided, however, that before any construction may be altered or demolished pursuant to clauses (1) or (2) above, judicial proceedings shall be instituted (except in emergencies, or if such breach by a Unit Owner resulted in or may result in an adverse and material effect to another Unit Owner, in which case judicial proceedings shall not be required to be instituted before such party may exercise such right to cure), or (3) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. Before exercising any of its rights under this subsection, the Board, the Condominium Managing Agent, or the non-defaulting Unit Owner, as the case may be, shall give the defaulting Unit Owner notice and an opportunity to cure the default as set forth hereinbelow, except in emergency situations as reasonably determined by the Board of Directors, the Condominium Managing Agent or each non-defaulting Unit Owner, as applicable, where only such notice (if any) is reasonable under the circumstances shall be required, as long as notice is given as soon as practicable thereafter. Except in emergency situations (as aforesaid), a defaulting Unit Owner shall cure a non-monetary default within twenty (20) days after written notice from the Board of Directors, the Condominium Managing Agent or the non-defaulting Unit Owner, as the case may be, that a non-monetary default has occurred, unless such non-monetary default is of such a nature that it cannot be reasonably be cured within twenty (20) days, in which event the defaulting Unit Owner shall have such reasonable time to cure such non-monetary default, *provided, however*, that the defaulting Unit Owner commences to cure such non-monetary default within such twenty (20) day period after written notice thereof and diligently and continuously prosecutes same to completion within sixty (60) days after written notice thereof, subject to Excusable Delays set forth in Section 11.13 of the Declaration.

(ii) Monetary Violations. A defaulting Unit Owner shall cure a monetary default within fifteen (15) days after written notice from the Board of Directors, the Condominium Managing Agent or the non-defaulting Unit Owner, as the case may be, that such monetary default has occurred. If a defaulting Unit Owner fails to perform any monetary obligation that remains uncured beyond the applicable cure period, or if the defaulting Unit Owner fails to reimburse any party entitled to reimbursement arising out of its enforcement of the

Condominium Documents, the party entitled to the performance of such monetary obligation shall be entitled to a lien against the defaulting Unit Owner's Unit pursuant to Section 7.3 of these Bylaws and the Maryland Contract Lien Act, to secure the amount of the reimbursement, including interest thereon at a rate that is five (5) percentage points above the floating prime rate of interest set forth from time to time in the Money Rates section of *The Wall Street Journal* or, if that section is no longer published, such other publication as the party entitled to the reimbursement may reasonably select.

(iii) In exercising any of its rights in accordance with this Section 7.2(c), the Board of Directors, the Condominium Managing Agent, or the non-defaulting Unit Owner, as the case may be, shall not be deemed in any manner guilty of or liable for trespass. Any actual and reasonable out of pocket expenses (including reasonable attorneys' fees and costs and costs for enforcement and collection) incurred in curing a breach by the defaulting Unit Owner shall be reimbursed to the Board of Directors, the Condominium Managing Agent, or the non-defaulting Unit Owner, as the case may be, upon demand. In any legal proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of such proceeding and reasonable attorneys' fees and costs and costs for collection, as determined by the court.

(d) **Legal Enforcement.** Failure to comply with any of the terms of the Condominium Documents shall be grounds for relief in accordance with the terms hereof, including, without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of Condominium assessments, any other relief provided for in the Condominium Documents, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Council of Unit Owners, the Board of Directors, or, if appropriate, by any aggrieved Unit Owner, and shall not constitute an election of remedies.

(e) **Charges.** The Board of Directors may levy reasonable charges against a Unit Owner for violations of the Condominium Documents by such Unit Owner or such Unit Owner's tenants, agents employees, contractors and invitees, after notice and an opportunity to cure pursuant to Section 7.2(c) of these Bylaws is given to such Unit Owner. No charge may be levied for a single violation in excess of the maximum amount permitted by Applicable Law. Each day a violation continues, after notice and an opportunity to cure pursuant to Section 7.2(c) of these Bylaws is given to the Unit Owner, shall be deemed a separate violation. Such charges are Special Assessments and shall be collectible as such.

### ***Section 7.3. Enforcement of Assessments.***

(a) **Lien.** The total Annual Assessment of each Unit Owner for General Common Expenses, Special Maintenance Expenses and any Special Assessment, or any other sum duly levied pursuant to the Condominium Documents (including late charges, reasonable attorneys' fees and costs of collection), is hereby declared to be a lien levied against the Unit of such Unit Owner as provided in the Maryland Condominium Act, which lien shall, with respect

to Annual Assessments, be effective on the first day of each fiscal year of the Condominium and, as to Special Assessments and other sums duly levied, on the first day of the next month that begins more than ten (10) days after delivery to the Unit Owner of notice of such Special Assessment or levy. The Board of Directors, or the Condominium Managing Agent if directed to do so by the Board of Directors, may file or record among the Land Records such other or further notice or instrument of any such lien as may be required to confirm the establishment and priority of such lien.

(b) **Acceleration.** In any case where an assessment against a Unit Owner is payable in installments, upon a default by such Unit Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment for the current fiscal year may be accelerated at the option of the Board of Directors and the entire balance of the assessment remaining for the current fiscal year may be declared due and payable in full by the service of notice of acceleration to the defaulting Unit Owner and such Unit Owner's Mortgagee.

(c) **Enforcement.** The lien for Condominium assessments may be enforced and foreclosed in any manner permitted by the laws of Maryland, by power of sale or action by the Board of Directors or the Condominium Managing Agent acting on behalf of the Council of Unit Owners. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of the Maryland.

(d) **Remedies Cumulative.** A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

## **ARTICLE 8**

### **AMENDMENTS TO BYLAWS**

These Bylaws may be modified or amended only by the unanimous express written consent of the Unit Owners. All amendments to these Bylaws shall be recorded among the Land Records. Notwithstanding the foregoing, the Board of Directors unilaterally may amend the Condominium Documents to correct or supplement any mathematical mistakes, inconsistencies or scrivener errors or any erroneous or incomplete information based upon any objectively verifiable fact, provided that all Unit Owners are provided prior notice of the same.

## **ARTICLE 9**

### **MISCELLANEOUS**

**Section 9.1. Notices.** Except as otherwise provided in the Condominium Documents, all notices, demands, bills, statements or other communications under these Bylaws shall be made in accordance with Section 11.10 of the Declaration.

**Section 9.2. Captions.** The captions used in these Bylaws are included solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the provisions of these Bylaws.

**Section 9.3. Gender.** The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

[END OF BYLAWS]

**RULES AND REGULATIONS FOR  
ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM**

**THESE RULES AND REGULATIONS FOR ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM** (the “Rules”) are hereby adopted in accordance with the provisions of Section 4.1 of the Declaration for Rockville Town Square Block 5 Condominium (the “Declaration”) dated \_\_\_\_\_, 2005 by RTS Residential Block 5, LLC, a Delaware limited liability company. All capitalized terms used in these Rules and not otherwise defined herein shall have the same meaning ascribed to them in the Declaration. These Rules govern various aspects of the use and the operation of the Property and are intended to be covenants running with the land pursuant to Applicable Law, and not personal covenants, and are intended to run with title to, and be burdens upon, each of the Units and to be binding upon each Unit Owner and its successors, assigns, tenants, subtenants, licensees and invitees using or occupying any portion of the Property.

**PARKING**

1.1 Hours of Operation of the Parking Unit. The Parking Unit Owner shall keep the Parking Unit open twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days per year for parking use by the Parking Beneficiaries.

1.2 Maintenance Standards. The Parking Unit Owner shall cause the Parking Unit to be maintained in a good and workmanlike manner in accordance with all Applicable Law and with the maintenance, cleaning, repair and inspection specifications attached hereto as Exhibit A. The Parking Unit Owner shall not perform any cleaning, maintenance or repair activities within or about the Parking Unit that would generate noise or vibrations that would interfere with the safety, comfort or convenience of any occupant of any Other Unit between the hours of 11:00 p.m. and 6:00 a.m. Any significant cleaning (i.e., cleaning that is not routine cleaning described on Exhibit A attached hereto and would generate unreasonable noise or vibration) shall only be performed between the hours of 11:00 p.m. and 6:00 a.m. and shall be conducted in a manner that does not materially impede the flow of traffic. Routine cleaning of the Parking Unit in accordance with the cleaning specifications described on Exhibit A shall be performed between the hours of 6:00 a.m. and 11:00 p.m. and shall be conducted in a manner that does not materially impede the flow of traffic.

1.2.1 If at any time the Residential Unit Owner shall determine that a condition exists within the Parking Unit that adversely effects access to, from and/or through the Parking Unit to the Residential Parking Facility and such condition requires immediate maintenance and/or repair, then the Residential Unit Owner, after giving notice (as herein described) to the Parking Unit Owner, shall have the right to immediately perform such maintenance and/or repair, at the cost and expense of the Parking Unit Owner. Such maintenance and repair shall be performed by the Residential Unit Owner in a good and workmanlike manner in accordance with all Applicable Law. Before exercising any of its rights under this Section 1.2.1, the Residential Unit Owner shall give the Parking Unit Owner notice and three (3) business days to remedy such condition, except in emergency situations as reasonably determined by the Residential Unit Owner, where only such

notice (if any) is reasonable under the circumstances shall be required, as long as notice is given as soon as practicable thereafter.

1.3 Loitering/Public Nuisance. The Parking Unit Owner shall undertake commercially reasonable efforts to discourage loitering in or about the Parking Unit and shall use commercially reasonable efforts to prevent any public nuisance from occurring in or about the Parking Unit.

## **LOADING AND DELIVERY**

2.1 Hours for Delivery. The Unit Owners shall permit deliveries, loading, and unloading of merchandise, supplies, furniture, equipment, and other property only during the hours of 7:00 a.m. to 10:00 p.m.

2.2 Use of Loading Docks. No Unit Owner shall permit the loading or unloading of merchandise, supplies, furniture, equipment, or other property outside of the loading areas except for routine deliveries from commercial delivery service providers (such as for example Federal Express or UPS). Each Unit Owner shall use commercially reasonable efforts to prevent the parking or standing outside of any loading area by delivery vehicles or equipment engaged in loading or unloading. Except for any loading areas that constitute Limited or Reserved Common Elements, the loading areas shall be used by the Unit Owners and the occupants of the respective Units on a first-come, first served basis. Except in any loading area that constitutes Limited Common Elements appurtenant to the Residential Unit, the Residential Unit Owner agrees (a) to stagger the scheduling of move-ins and move-outs by residents so that no more than one move is scheduled to be in process in any one of such loading areas at any specified time, and (b) that notwithstanding unanticipated overlap in move-ins and move-outs of residents, at least one service bay of each such loading area shall be available for use at any given time by occupants of the Commercial Unit. If the Residential Unit Owner notifies the Commercial Unit Owner reasonably in advance of the hours during which the Residential Unit Owner anticipates a resident move-in or move-out and its desire to use a particular loading area in connection therewith, then at least one service bay of such loading area shall be available for use for such resident move-in or move-out.

2.3 Interference with Travel Lanes and Garage. Each of the Unit Owners shall use its commercially reasonable efforts to prohibit the parking or standing of delivery vehicles that interfere with the use of any access or travel lanes or the parking facilities within the Parking Unit or impede the flow of traffic.

## **USE OF OUTDOOR AREAS**

3.1 Description of Outdoor Area. The "Outdoor Area" is that portion of the General Common Elements depicted on Exhibit B attached hereto, and includes outdoor restaurant seating, common walkways, and other pedestrian areas. Except as expressly set forth in Sections 3.2 [Outdoor Dining and Common Seating Areas], 3.3 [Outdoor Activities] and 3.4 [Kiosks], no portion of the Outdoor Area shall be used for any purpose other than pedestrian access, ingress and egress.

### 3.2. Outdoor Dining and Common Seating Areas.

3.2.1. The Commercial Unit Owner may permit any restaurant operator that occupies space within the Commercial Unit to use sidewalk space adjoining or within any such restaurant or café or the sidewalk areas along the curb opposite the storefront of any such restaurant or café for outdoor dining (an "Outdoor Dining Area"), subject to the terms of these Rules and Applicable Law. The Commercial Unit Owner shall have priority over any other Unit Owner to use such sidewalk areas for the Commercial Unit Owner's Outdoor Dining Area. Outdoor dining shall be permitted to be conducted in the Outdoor Dining Areas only during the hours of 7:00 a.m. until 11:00 p.m. on Sundays through Thursdays and during the hours of 7:00 a.m. until 2:00 a.m. of the next day on Fridays, Saturdays, holidays and evenings prior to holidays recognized by applicable governmental authorities and commonly recognized holidays. The Outdoor Dining Area to be used by any restaurant operator shall be designated as a Reserved General Common Element for the Commercial Unit under Section 2.5(c) of the Declaration and the responsibility for the maintenance, cleaning and repair, and cost of same, when the Outdoor Dining Area is designated as a Reserved General Common Element for the Commercial Unit, shall be that of the Commercial Unit Owner. During such times that any Outdoor Dining Area is not used by a restaurant operator for a significant period of time (such as, for example during the winter months) the routine maintenance and operation (and repair and replacement to the extent damage to any such Outdoor Dining Area is not caused by the negligence or willful act or omission of the Commercial Unit Owner, its tenants, subtenants, licensees, employees, invitees, contractors or agents) of such area shall be the responsibility of the Commercial Management District for the Project or the Board of Directors, as applicable, and the cost of same if performed by the Board of Directors shall be a General Common Expense. The Commercial Unit Owner shall provide in any lease, sublease, license agreement or other occupancy agreement with a restaurant operator that occupies space within the Commercial Unit that includes Outdoor Dining Areas that such tenant or occupant shall clean its Outdoor Dining Area and maintain it in a First Class condition; provided, however, notwithstanding such lease provision, the Commercial Unit Owner shall continue to be responsible for cleaning the Outdoor Dining Areas and maintaining them in a First Class condition.

3.2.2. The Commercial Unit Owner may place a reasonable number of chairs, tables and benches (the "Common Area Seating") within the Outdoor Area in locations other than the Outdoor Dining Areas (the "Public Outdoor Area") for use by guests, invitees and/or other permittees (including residents and their guests) provided that the Common Area Seating does not unreasonably impede or interfere with pedestrian access, ingress and egress through and across the Public Outdoor Area. The Common Area Seating may be used by such guests, invitees and/or other permittees for consumption of food and beverages either purchased on the Property or purchased elsewhere and brought onto the Property, but no restaurant operator occupying space within the Commercial Unit or any other person shall serve food or beverages within, or to guests, customers, invitees and/or other permittees on the Property using, the Common Area Seating. The Board of Directors or the Commercial Management District, as applicable, shall cause the Common Area Seating to be cleaned and otherwise maintained in a First Class condition and the cost of such cleaning and maintenance if performed by the Board of

Directors shall be a General Common Expense, or a Special Maintenance Expense as set forth on Exhibit E of the Declaration, or as otherwise determined by the Board of Directors.

3.3 Outdoor Activities. The Commercial Unit Owner may use on a periodic basis the Public Outdoor Area for other special activities and events so long as such activities and events (i) are conducted in a safe and orderly manner and in compliance with all Applicable Law and all other provisions of the Declaration, the Bylaws and these Rules, (ii) are in keeping with, and will promote or enhance, the First Class quality and perception of the Property, and (iii) will not create such amounts or volume of noise, congestion, odors, or light so as to materially disrupt or materially interfere with the use and enjoyment by residents of their respective residential unit located within the Residential Unit or by tenants of the Commercial Unit of their respective leased premises located within the Commercial Unit. Examples of activities or events that may be conducted in the Public Outdoor Areas (for illustrative purposes only and provided that such activities or events comply with the foregoing provisions of this Section 3.3) are art shows, farmer's market, antique festivals, and certain types of live performances. No activities or events shall be conducted in the Public Outdoor Areas at any time before 9:00 a.m. or after 11:00 p.m. The Commercial Unit Owner shall notify the Residential Unit Owner and Parking Unit Owner in writing at least ten (10) days prior to any such activity or event, which notice shall describe in reasonable detail the type of activity or event that will be conducted and shall specify the dates on and hours during which such activity or event will be conducted. The Residential Unit Owner shall have the right to use the Public Outdoor Areas for special activities and events so long as such activities and events comply with the requirements set forth above and are coordinated with the property manager of the Commercial Unit so as not to materially interfere or conflict with any scheduled activity or event on the Public Outdoor Areas by the Commercial Unit Owner. Unless the Unit Owners agree otherwise, each Unit Owner shall be responsible for the cost of any activity or event it chooses to conduct or sponsor in the Public Outdoor Area and all associated costs for cleaning and repairs.

3.4 Kiosks. Subject to Applicable Law, the Commercial Unit Owner shall have the right to permit the use of portions of the Public Outdoor Areas for the erection or installation of up to ten (10) kiosks or carts (2 permanent kiosks and 8 moveable kiosks or carts) within the entire Project for the sale of goods and services, provided that (i) such kiosks or carts do not unreasonably impede pedestrian access, ingress, and egress through and across the Public Outdoor Area and otherwise comply with these Rules and the restrictions set forth in Article 8 of the Declaration, (ii) the appearance of such kiosks or carts are compatible and in keeping with a First Class project, and (iii) no kiosk or cart shall be used for the offering for rent or sale, or for the distribution or dissemination of information regarding the rental of apartment units or sale of residential condominium units other than those located within the Project. No kiosk or cart shall be operated or open for business in the Public Outdoor Areas at any time before 6:00 a.m. or after 11:00 p.m. The Residential Unit Owner shall have the right to use one of the ten (10) permitted kiosks or carts, in a location within the Public Outdoor Areas reasonably acceptable to the other Unit Owners, for the distribution or dissemination of information regarding the rental or sale of residential units within the Property, subject to clauses (i) and (ii) above and provided that such kiosk or cart shall not be operated or open for business in the Public Outdoor Areas at any time before 6:00 a.m. or after 11:00 p.m.



**HOURS OF OPERATION, CONSTRUCTION  
ACTIVITIES, MAINTENANCE, APPEARANCE AND REFUSE**

4.1 General Standard. The Commercial Unit Owner and the Residential Unit Owner shall keep their respective Units and the respective Reserved General Common Elements and Limited Common Elements to which such Unit Owners have been assigned the upkeep responsibilities, in a First Class condition. The Parking Unit Owner shall maintain the Parking Unit in the condition specified in Section 1.2 of these Rules [Maintenance Standards]. No use shall be permitted of any Unit that constitutes a public or private nuisance or that generates excessive litter, dust or dirt that can be seen outside of a Unit or is an unsanitary use that directly causes, attracts or facilitates the infestation of rodents, vermin or other pests and that use remains unabated.

4.2 Trash Removal. Each Unit Owner shall and shall cause the occupants of its respective Unit to place trash, garbage and refuse in proper containers in the designated trash areas and/or trash rooms that serve the Property, and each Unit Owner shall cause its occupants to keep and maintain such trash areas and/or trash rooms in good, clean First Class condition. If a Unit Owner is in breach of its obligations under this Section 4.2, then any non-defaulting Unit Owner may cure such breach in accordance with Section 7.2(c)(i) of the Bylaws. The Commercial Unit Owner shall cause each occupant of the Commercial Unit that is a restaurant or food service operator to install garbage disposal equipment or wet garbage storage facilities to serve such occupant's premises that are adequate to minimize any obnoxious odors resulting from wet trash or garbage.

4.3 Signage. The signage used at the Property by the Unit Owners/and or their occupants shall at all times conform in all respects to the signage criteria set forth in Exhibit C attached hereto (the "Signage Criteria"). The Signage Criteria shall not be modified or amended without the prior written approval of the Council of Unit Owners, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding provisions of this Section 4.3, each Unit Owner agrees that (i) except as provided in the Signage Criteria, no signs shall be placed on the outside of or on any roofs of any portion of the Property, (ii) all signs must be professionally designed, (iii) no signs shall be permitted that flash, blink, or otherwise light in an alternate fashion, and (iv) directional signage and other signage within the Parking Unit required by Applicable Law shall not be subject to the prior written approval of the Council of Unit Owners. All signage shall be subject to Applicable Law. Except for the signage in the Parking Unit, all signs shall be maintained in First Class condition, operating order, and repair at all times. Signage within the Parking Unit shall be maintained in accordance with the generally prevailing standards governing the maintenance of signage in other governmentally owned parking facilities in the County.

4.4 Outside Storage. The Commercial Unit Owner shall not permit outside storage of any merchandise, supplies, or other property (except for the limited right of tenants of the Commercial Unit Owner to conduct temporary sidewalk sales so long as such sales do not unreasonably impede pedestrian access through, over, and across the sidewalks). To the extent permitted by Applicable Law, the Residential Unit Owner shall prohibit the residents of the Residential Unit from hanging towels, articles of clothing, or other items on rails of, and shall

prohibit residents of the Residential Unit from storing personal property on, the balconies of the residential units within the Residential Unit; provided, however, that the placement of patio furniture or bicycles or a Telecommunications Device allowed to be installed by residents of the Residential Unit in accordance with Applicable Law (as more particularly described in Section 4.5 below [Telecommunications Devices] on the balconies of the residential units within the Residential Unit shall not constitute a violation of the foregoing prohibition.

4.5 Telecommunications Devices. Each Unit Owner agrees that it shall not permit the use of any portion of its respective Unit for the installation or location of antennas, satellite dishes, and other similar telecommunications devices or equipment (a “**Telecommunications Device**”) for use by third parties not providing service to the Unit; provided, however, that a Telecommunications Device installed by any residents of the Residential Unit outside their residential units shall be allowed only so long as and to the extent such right to do so is mandated by Applicable Law. Any Telecommunications Device installed or located on any Unit and providing service to the Unit or to a tenant within a Unit (except for any Telecommunications Device that any resident of the Residential Unit is allowed by Applicable Law to install or locate on or outside its residential unit) shall be installed on the Unit at such a location, and screened from view in such a manner, so as to be as aesthetically pleasing as feasibly possible and consistent with the location and screening of similar items located in First Class projects. The Unit Owners agree to consult and reasonably cooperate with each other on a case by case basis when the need or right to install a Telecommunications Device arises so as to collectively determine the best possible location and screening for such Telecommunications Device.

4.6 Construction Activities. Due to the importance of holiday sales to the Commercial Unit, except in cases of emergency, no exterior work or any construction activities shall be performed during retail operating hours from the period of November 1 through January 15 if such exterior work or construction activities would have any potential disruptive effect on the Commercial Unit, as reasonably determined by the Commercial Unit Owner, unless the prior written consent of the Commercial Unit Owner is obtained.

### **NOISE, ODORS AND LIGHTING**

5.1 Noise. Each Unit Owner agrees (i) to keep all mechanical and other apparatus located on or within its Unit, or installed by such Unit Owner for its sole use elsewhere on the Property free of vibration and noise that may be transmitted beyond the improvements located on such Unit; provided, (ii) to prohibit the use by occupants of its respective Unit of any apparatus for sound reproduction or transmission (including, but not limited to, loudspeakers, compact disc players, public address systems, sound amplifiers, radios, television sets, or any musical instruments) in any manner so as to be heard outside of such Unit Owner’s Unit, (iii) not to allow or permit any other types of noise or vibration to emanate from the Improvements located on such Unit Owner’s Unit in any manner so as to be heard or felt beyond the Improvements located on such Unit Owner’s Unit or to emanate from outside the Improvements located on any portion of such Unit Owner’s Unit in any manner as to constitute a nuisance or to interfere with the safety, comfort, or convenience of any occupant of the Improvements on any other Unit Owner’s Unit, and (iv) not schedule fire alarm testing during the periods from 11:00 a.m. to 2:00 p.m. and/or from 6:00 p.m. to 8:00 a.m. on any given day. The Residential Unit Owner has been

provided with a copy of the Commercial Unit Owner's standard form of technical criteria for commercial tenants' improvements for roofing, mechanical, electrical, plumbing and restaurant equipment which is or will be "Exhibit B-2" of the commercial tenants' leases with the Commercial Unit Owner as well as the technical specifications for any existing tenants. The Residential Unit Owner has acknowledged its approval and acceptance of the technical criteria set forth in "Exhibit B-2" or other technical specifications for any existing leases (collectively, the "Pre-Approved Technical Specifications"). Provided that such mechanical and other apparatus are installed, maintained and operated in accordance with the Pre-Approved Technical Specifications, then such mechanical and other apparatus shall be deemed to be properly installed, maintained and operated by the Commercial Unit Owner, its tenants and/or subtenants and not in violation of this Section 5.1. All equipment installed by a Unit Owner on the roof of any improvements located on the Property must be installed, operated and maintained in accordance with the Pre-Approved Technical Specifications. If a tenant leasing space within the Commercial Unit shall have technical criteria governing the installation, maintenance or operation of such mechanical or other apparatus that materially deviates from the Pre-Approved Technical Specifications, then the Residential Unit Owner shall have the right to approve such deviation for the purpose of reconciling such criteria with the Pre-Approved Technical Specifications, such approval not to be unreasonably withheld. Notwithstanding the foregoing provisions of this Section 5.1, the Commercial Unit Owner may permit any restaurant operator that has an Outdoor Dining Area to play recorded music through loudspeakers within the confines of the Outdoor Dining Area provided that the music cannot be heard by residents of the Residential Unit on the lowest level of the Residential Unit (provided that such residential units have been constructed with adequate sound transmission qualities customary in similar First Class projects as of the date of completion and provided further that such residential unit's doors, windows and other openings are closed at such time) and provided that no such music may be played before 9:00 a.m. or after 11 p.m., Sundays through Thursdays and before 9:00 a.m. or after 12:00 a.m. of the next day on Fridays, Saturdays, holidays and the evenings prior to a holidays recognized by applicable governmental authorities and commonly recognized holidays.

5.2 Odors. No Unit Owner shall cause or permit obnoxious food odors or other objectionable odors to emanate or be dispelled from its respective Unit. The Commercial Unit Owner shall not permit the use of any portion of the Commercial Unit for restaurant use except for areas that are sufficiently equipped with ventilation. Provided that such ventilation equipment and other apparatus are installed, maintained and operated in accordance with the Pre-Approved Technical Specifications (defined above in Section 5.1), then such ventilation and other apparatus shall be deemed to be properly installed, maintained and operated by the Commercial Unit Owner, its tenants and/or subtenants and not in violation of this Section 5.2. If a tenant of the Commercial Unit shall have technical criteria that materially deviates from the Pre-Approved Technical Specifications, then the Residential Unit Owner shall have the right to approve such deviation for the purpose of reconciling such criteria with the Pre-Approved Technical Specifications, such approval not to be unreasonably withheld. The Commercial Unit Owner shall not permit the use of any portion of the Commercial Unit as a pet store, nail salon, or beauty parlor unless such portion of the Commercial Unit provided for such use is equipped with sufficient ventilation to prevent obnoxious or objectionable odors from unreasonably emanating into the occupied portions of the Residential Unit, and any such odors emanating from such space shall not be deemed "obnoxious" or "objectionable" if adequate ventilation is

installed, maintained and operated in accordance with the mechanical standards provided or approved by the Commercial Unit Owner's independent mechanical engineer (which engineer shall be properly licensed in accordance with Applicable Law) and reflects design standard customary in similar First Class mixed-use projects.

5.3 Lighting. Each Unit Owner agrees to abide by the lighting plans submitted to the City of Rockville and the lighting criteria that has been or shall be jointly prepared by the Unit Owners. The lighting plan and the lighting criteria shall not be modified or amended, and there shall be no changes in lighting for the Outdoor Area without the consent of the Council of Unit Owners.

5.4 Prompt Enforcement. If any Unit Owner believes that another Unit Owner or any of its occupants, tenants, licensees, guests, invitees or other permittees is in violation of the provisions of Sections 5.1 [Noise], 5.2 [Odors] and 5.3 [Lighting] herein, such Unit Owner, through its property manager or other authorized representative, may notify the property manager or other authorized representative of another Unit Owner (which notification may be made orally (subject to a follow-up notice in writing), either by telephone or in person), and such notified Unit Owner shall immediately take commercially reasonable measures to alleviate any violation, including (without limitation) notifying the offending occupant, tenant, licensee, guest, invitee or other permittee on or in its Unit of the alleged violation and requesting the offending occupant, tenant, licensee, guest, invitee or other permittee to take appropriate action to alleviate such violation. Notwithstanding the foregoing provisions of this Section 5.4, no Unit Owner shall be deemed to be in default under the Declaration, the Bylaws or these Rules because of any alleged violation of the provisions of Sections 5.1 [Noise], 5.2 [Odors], or 5.3 [Lighting] above or this Section 5.4 unless and until written notice of such default shall have been given in accordance with Section 7.2(c)(i) of the Bylaws.

## **ENFORCEMENT, MODIFICATION AND AMENDMENT**

6.1 Enforcement. These Rules form a part of the Condominium Documents, and consequently, the enforcement of these Rules, including the remedies available for any violation or breach of, or default under, these Rules shall be governed by the provisions of Article 7 of the Bylaws [Compliance and Default], Section 11.13 [Excusable Delay] and Section 11.14 [Arbitration of Disputes] of the Declaration.

6.2 Writing Required to Amend. These Rules may not be terminated, canceled, changed, waived, modified, or amended in whole or in part without the written consent or approval of each of the Unit Owners affected by such termination, cancellation, change, waiver, modification or amendment.

6.3 Failure to Respond. If any Unit Owner fails either to consent to a written request for any change, waiver, modification, or amendment to these Rules or to respond to such request with specific objections within thirty (30) days after receipt of such request from any Unit Owner, then such failure shall be deemed to constitute a consent and approval of the proposed change, waiver, modification, or amendment to these Rules. The request shall contain the following statement in bold face type:

**A UNIT OWNER OF THE ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM HEREBY NOTIFIES YOU THAT IT IS REQUESTING A CHANGE, WAIVER, MODIFICATION OR AMENDMENT TO THE RULES AND THAT YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS AFTER RECEIPT OF THIS NOTICE SHALL MEAN THAT YOU SHALL BE DEEMED TO HAVE CONSENTED AND APPROVED OF THE PROPOSED CHANGE, WAIVER, MODIFICATION OR AMENDMENT TO THE RULES.**

6.4 No Recording. The Unit Owners agree that these Rules shall not be recorded in the Land Records.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the undersigned has caused these Rules to be adopted as of the \_\_\_\_th day of \_\_\_\_\_, 2005.

**RTS Residential Block 5, LLC,**  
A Delaware Limited Liability Company

**By: RTS-RD Rockville, LLC,**  
A Delaware Limited Liability Company,  
Sole Member and Manager

**By: RD Rockville, LLC,**  
A Maryland Limited Liability Company,  
Manager

**By: RD Maryland Avenue Limited  
Partnership,**  
A Maryland Limited Partnership,  
Sole Member and Manager

**By: RD Commerce Street, LLC**  
A Maryland Limited Liability Company,  
General Partner

**By: S.J. Ross Associates, Inc.,**  
A Maryland Corporation,  
Manager

By: \_\_\_\_\_  
Scott J. Ross, President

## Exhibit A

### Parking Unit Maintenance, Cleaning and Inspection Specifications

The Parking Unit Owner will provide the same level of the then current "maintenance and cleaning functions" provided in other governmentally owned public parking facilities in Montgomery County. The Parking Unit Owner will use reasonable efforts to schedule and perform the reasonably foreseeable maintenance and cleaning services in a manner that minimizes adverse impacts on the parking spaces intended to satisfy public demands for parking.

#### Routine Cleaning and Maintenance

The anticipated routine cleaning and maintenance services for the Parking Unit are as follows:

##### Garage Sweeping

Description:	Mechanical and manual sweep all areas of garage except interior of stairwells/elevators, and storage areas.
Frequency:	Every two (2) weeks.

##### Litter Pickup

Description:	Pick up all litter in all areas of the Parking Unit.
Frequency:	Weekly.

##### Cleaning of Stairtowers, and Elevator Lobbies

- |    |              |  |
|----|--------------|--|
| A. | Description: | Inspect, paper chase, spot sweet, remove all trash, debris and other unnatural substances.   |
|    | Frequency:   | Weekly.  |
| B. | Description: | Sweep stairtowers, and elevator lobbies, clean all stairtower window ledges, wipe down all hand railings and stair stringers and, weather permitting, wet mopping and disinfect. |
|    | Frequency:   | Every two (2) weeks.   |

### Washdown/Scrubbing

- Description: Washdown decks, raised platforms and guardrails.
- Before and after washdown, all drains shall be checked to see that they are functioning properly.
- Frequency: Semi-annually (i.e., two (2) times per year).

### Other Items As Needed

- Description: Snow removal and ice control.  
Relamping and cleaning of garage light fixtures.

### Annual Inspection

The Parking Unit Owner shall inspect the Parking Unit annually to determine any deficiencies within the structure, driveways, and walkways, prepare a written report indicating the findings, recommendations, and priorities of repairs or need for more detailed investigations. The Parking Unit Owner shall perform the following annual inspection program:

- I. Determine the type, extent, cause and effects of problems related to the parking facility.
  - A. Review existing construction drawings, specifications, construction reports and testing comments.
  - B. Conduct a thorough field examination of the structural system and note the physical condition.
    1. Concrete Slabs
      - a) Visual Inspection
        - (1) Floor
        - (2) Ceiling
        - (3) Floor Coatings
      - b) Delamination Inspection
        - (1) Floor
        - (2) Ceiling
      - c) Protective Sealer
    2. Beams, columns, precast concrete, and connectors
      - a) Visual Inspection
        - (1) Columns
        - (2) Beams
        - (3) Precast Concrete
        - (4) Connections



3. Joint-Sealant Systems
    - a) Visual Inspection
      - (1) Expansion joints
      - (2) Construction joints
      - (3) Control joints
      - (4) Cracks previously routed and sealed
  4. Stair Towers and Mechanical Rooms
    - a) Visual Inspection
      - (1) Stairs and landings
      - (2) Walls
      - (3) Glass
      - (4) Doors and hardware
  5. Mechanical/Electrical Systems
    - a) Drainage system (includes oil/grit separator and pumps)
    - b) Watering system
    - c) Ventilation equipment
    - d) Fire protection
    - e) General lighting
    - f) Exit and emergency lighting
    - g) Washdown system
  6. Paint
  7. Exterior Items
    - a) Driveways
    - b) Walkways
- C. Photographs may be taken to provide visual reference.
- II. Prepare a written report indicating the findings, alternatives, repairs, recommendations, costs, prioritized repairs and cost benefit analysis.
- A. Make a structural analysis for the stability and safety of the parking structure and its elements in relation to the repair and renovation problems. Also recommend any testing that may be needed.
  - B. Perform value engineering/life cycle analysis for various construction materials, equipment and repair techniques used for repair and renovation of parking structures to determine the best performance service length and cost effectiveness.
  - C. Recommend any testing and repairs, with related costs, that are immediately necessary for the continuing safety of the facility patrons.
  - D. Evaluate and present restoration program alternatives and costs.

**Exhibit B**

Outdoor Area  
(attached)



**Exhibit C**

Signage Criteria  
(attached)

LAST REVISED: 1.19.05

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**PHASE II CLOSING UNDER AMENDED AND RESTATED  
GENERAL DEVELOPMENT AGREEMENT (BLOCKS 1/2, 3B, AND 5; LOTS 18, 19, AND 20)  
AND GENERAL DEVELOPMENT AGREEMENT (BLOCK 4)  
FOR ROCKVILLE TOWN SQUARE PROJECT**

**TARGET PRE-CLOSING DATE: FEBRUARY 5, 2005  
TARGET CLOSING DATE: MARCH 5, 2005**

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<b>CITY:</b>	City of Rockville Attention: Mr. Arthur D. Chambers 111 Maryland Avenue Rockville, Maryland 20850  T: 240.314.8202 F: 240.314.8210 C: 301.335.6943 E: <a href="mailto:achambers@rockvillemd.gov">achambers@rockvillemd.gov</a>
<b>CITY'S COUNSEL:</b>	Paul T. Glasgow, Esquire Venable LLP Fifth Floor One Church Street Rockville, Maryland 20850  T: 301.217.5601 F: 301.217.5617 E: <a href="mailto:ptglasgow@venable.com">ptglasgow@venable.com</a>  <u>and</u>  Kevin L. Shepherd, Esquire Venable LLP 1800 Mercantile Safe Deposit & Trust Building Two Hopkins Plaza Baltimore, Maryland 21201-2978  T: 410.244.7772 F: 410.244.7742 E: <a href="mailto:klshepherd@venable.com">klshepherd@venable.com</a>  <u>and</u>  Daniel W. China, Esquire

	<p>Venable LLP 210 Allegheny Avenue Towson, Maryland 21204</p> <p>T: 410.494.6204 F: 410.821.0147 E: <a href="mailto:dwchina@venable.com">dwchina@venable.com</a></p>
<b>FRIT:</b>	<p>Federal Realty Investment Trust Attention: Mr. Don Briggs 1626 East Jefferson Street Rockville, Maryland 20852-4041</p> <p>T: 301.998.8173 F: 301.998.3705 E: <a href="mailto:DBriggs@federalrealty.com">DBriggs@federalrealty.com</a></p>
<b>FRIT'S COUNSEL:</b>	<p>Richard M. Zeidman, Esquire Linowes and Blocher LLP 7200 Wisconsin Avenue, Suite 800 Bethesda, Maryland 20814</p> <p>T: 301.961.5136 F: 301.654.2801 E: <a href="mailto:rzeidman@linowes-law.com">rzeidman@linowes-law.com</a></p> <p><u>and</u></p> <p>Roger D. Winston, Esquire Linowes and Blocher LLP 7200 Wisconsin Avenue, Suite 800 Bethesda, Maryland 20814</p> <p>T: 301.961.5158 F: 301.654.2801 E: <a href="mailto:rwinston@linowes-law.com">rwinston@linowes-law.com</a></p> <p><u>and</u></p> <p>Baris Ipeker, Esquire Federal Realty Investment Trust 1626 East Jefferson Street Rockville, Maryland 20852-4041</p> <p>T: 301.998.8189 F: 301.998.3702</p>

	<p>E: <a href="mailto:BIpeker@federalrealty.com">BIpeker@federalrealty.com</a></p> <p><u>and</u></p> <p>Dawn M. Becker, Esquire  Vice President, General Counsel and Secretary  Federal Realty Investment Trust  1626 East Jefferson Street  Rockville, Maryland 20852-4041</p> <p>T: 301.998.8104  F: 301.998.3702  E: <a href="mailto:DBecker@federalrealty.com">DBecker@federalrealty.com</a></p>
<b>RESIDENTIAL CO-DEVELOPER</b>	<p>RD Rockville, LLC  c/o S.J. Ross Associates, Inc.  Attention: Mr. Scott J. Ross  Suite 350  7910 Woodmont Avenue  Bethesda, Maryland 20814</p> <p>T: 301.657.8899  F: 301.657.0225  E: <a href="mailto:sross@rossinvestments.com">sross@rossinvestments.com</a></p> <p><u>and</u></p> <p>RD Rockville, LLC  c/o DANAC Corporation  Attention: Mr. John F. Jaeger, Jr.  Suite 1120  7501 Wisconsin Avenue  Bethesda, MD 20814</p> <p>T: 301.657.2800  F: 301.657.4560  E: <a href="mailto:jack@danac.com">jack@danac.com</a></p>
<b>RESIDENTIAL CO-DEVELOPER'S COUNSEL:</b>	<p>Pamela V. Rothenberg, Esquire  Womble Carlyle Sandridge &amp; Rice, PLLC  7<sup>th</sup> Floor  1401 Eye Street, N.W.  Washington, D.C. 20005</p> <p>T: 202.857.4422  F: 202.261.0022</p>

	<p>C: 703.405.3325  E: <a href="mailto:prothenberg@wcsr.com">prothenberg@wcsr.com</a></p> <p><u>and</u></p> <p>Karen E. Carey, Esquire  Womble Carlyle Sandridge &amp; Rice, PLLC  One West Fourth Street  Winston-Salem, North Carolina 27101</p> <p>T: 336.721.3536  F: 336.733.8311  E: <a href="mailto:kcarey@wcsr.com">kcarey@wcsr.com</a></p> <p><u>and</u></p> <p>Scott E. Barat, Esquire  Shaw Pittman LLP  1650 Tysons Boulevard  McLean, Virginia 22102-4859</p> <p>T: 703.770.7995  F: 703.770.7901  E: <a href="mailto:scott.barat@shawpittman.com">scott.barat@shawpittman.com</a></p>
<b>LENDER:</b>	<hr/> <hr/> <hr/>
<b>LENDER'S COUNSEL:</b>	<hr/> <hr/> <hr/>
<b>COUNTY:</b>	<p>Montgomery County Government  Office of the County Executive  Attention: Chief Administrative Officer  101 Monroe Street, Second Floor  Rockville, Maryland 20850</p>
<b>COUNTY'S COUNSEL:</b>	<p>Diane R. Schwartz Jones, Esquire  Associate County Attorney  Office of the County Attorney  101 Monroe Street, 3d Fl.  Rockville, Maryland 20850</p> <p>T: 240.777.6743</p>

	F: 240.777.6705 E: <a href="mailto:diane.jones@montgomerycountymd.gov">diane.jones@montgomerycountymd.gov</a>
<b>TITLE COMPANY:</b>	Commercial Title Group, Inc. Attn: Barbara Blitz 8605 Westwood Center Drive Suite 200 Vienna, Virginia 22182  T: 703.610.6392 F: 703.610.6382 E: <a href="mailto:bblitz@commercialtitle.com">bblitz@commercialtitle.com</a>

**BLOCK/LOT TABLE**

<b>Block</b>	<b>Lot</b>	<b>Owner</b>
1/2	20	RTS Residential Block 1/2, LLC
3B	19	RTS Residential Block 3B, LLC
Cultural Arts	22	
Library	21	Montgomery County
5	18	RTS Residential Block 5, LLC
4	23	City



**CLOSING CHECKLIST**

<b>DOCUMENTATION</b>	<b>SIGNATORIES COMMENT</b>	<b>STATUS</b>
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**GENERAL DOCUMENTS**

1. General Development Agreement dated September 9, 2003	City FRIT RCD	<b>COMPLETED</b>
2. Amended and Restated GDA (Blocks 1/2, 3B, and 5) for Rockville Town Square dated June 14, 2004 ("GDA")	City FRIT RCD	<b>COMPLETED</b>
3. First Amendment to Amended and Restated GDA dated March __, 2005 (BA3:291707)	City FRIT RCD	Draft circulated on 1.16.05 --Waiver of condition precedent re commercial management district (target completion date is Fall 2005, with 12.31.05 outside date) --Waiver of condition precedent re development approvals for Cultural Arts Building (target completion date is 7.1.05) --Adjust milestone schedule—revise Project Development Schedule --Add Fremont and Corus as approved lenders --Specify that no parking lease will be needed --Specify that this will be on all residential condo project—no rental units

4. Development Approvals for Public Infrastructure Improvements (Section 5.2.1.2 of GDA)		See waiver above; Art and Roger to discuss Federal permits (Army Corps of Engineers) needed for buffer area—mitigation plan nearing approval; to be completed by Closing
5. Development Approvals for Public Parking Facilities (Section 5.2.1.2 of GDA)		<b>COMPLETED</b>
6. Development Approvals for Cultural Arts Building, if applicable (Section 5.2.1.2 of GDA)		Will not complete by Closing; waive pursuant to First Amendment to Amended and Restated GDA (see above)
7. Evidence of equity contribution (Section 5.2.1.5 of GDA)	RCD	Pam to draft
8. Evidence of construction financing (Section 5.2.1.6 of GDA)	RCD Fremont Corus	Term sheet finalized; Fremont (Blocks 4 and 5) and Corus (Blocks 1/2 and 3B)
9. Opinion(s) of counsel from RCD concerning RCD entities, including title holding entities (Section 5.2.1.7 of GDA)	RCD's counsel	Pam to draft
10. Opinion of counsel to City concerning City's authority and the enforceability of the GDA (Section 5.2.1.7 of GDA)	City's counsel	KLS to draft
11. Tri-Party Agreement (Fremont) (Section 5.2.1.8 of GDA)	RCD City Fremont	Pam circulated draft on 1.9.05

12. Tri-Party Agreement (Corus) (Section 5.2.1.8 of GDA)	RCD City Corus	Draft to be based on Fremont Tri-Party Agreement draft
13. Adoption of City Appropriation (Section 5.2.1.9 of GDA)	City	<b>COMPLETED</b>
14. County Contribution (Section 5.2.1.10 of GDA)	County	<b>COMPLETED</b>
15. Garage Construction Contract (Section 5.2.1.11 of GDA) (Blocks 2, 4, and 5)	City Garage Developer	Part I completed Part II in process
16. Issuance of Voluntary Cleanup Program Approval and Site Status Letter (Section 5.2.1.12 of GDA)		<b>COMPLETED</b> (does not apply to Block 4—just need closure letter for Amoco site); Amoco has not sent letter to State re removal of tanks; Ric Woody/Ed Duffy to follow-up with Amoco
17. Block 5 Parking Purchase Agreement (Sections 5.2.1.14 and 5.2.3.6(b) of GDA)	City RCD	Pam circulated draft on 1.17.05
18. Construction Contract for Public Infrastructure Improvements (Section 5.2.1.15 of GDA)	City	<b>COMPLETED</b>
19. FRIT Retail Condominium Unit Purchase Agreement (Section 5.2.1.16 of GDA)	FRIT RCD	<b>COMPLETED</b>
20. Cultural Arts Building Purchase Agreement		Rich circulated draft; KLS to review
21. Pad Work Escrow funding by City (Section 5.2.1.17 of GDA)	City	Review definition of "Pad Work". Cf. Block 3B

22. Deeds for Public Parking Garage Condominium Units (Section 5.2.1.24 of GDA) (Blocks 1/2 and 5)	RCD	KLS to draft
23. FIRPTA Affidavit from RCD (Section 5.2.3.6(a)(ii) of GDA)	RCD	Pam to draft
24. Satisfaction of original Purchase Money Note—marked “paid” (Section 5.2.3.6(b)(i) of GDA)	City	KLS to draft
25. Certificate of satisfaction and release of Purchase Money Deed of Trust (Section 5.2.3.6(b)(i) of GDA)	City	
26. Pad Work Development Agreement (Section 5.2.3.6(c) of GDA)	City RCD	Determine what needs to be prepared
27. Letter from City to each Ross entity regarding completion of Pad Work		KLS to draft in form of confirmation letter documenting completion of Pad Work on a per Block basis. Blocks will be completed in following sequence: 5 3B 2 1 4
28. Public Utility Easements	City	Saundra Block to draft
29. RDR Air Rights Easement		Saundra Block to draft; applies to projection over public sidewalks
30. Public Access Easement Agreement		Saundra Block to draft

## CONDOMINIUM DOCUMENTS

31. Block 1/2 Condominium Declaration (Section 5.3 of GDA) <ul style="list-style-type: none"> <li>• <u>Exhibit A</u> (Legal Description of the Property)</li> <li>• <u>Exhibit B</u> (Bylaws of the Condominium)</li> <li>• <u>Exhibit C</u> (Condominium Plats)</li> <li>• <u>Exhibit D</u> (Schedule of Percentage Interests and Votes)</li> <li>• <u>Exhibit E</u> (Schedule of Alternative Percentage Allocations, Special Maintenance Items, and Special Maintenance Expenses)</li> </ul>	City RCD	Renee to circulate redrafts on or about 1.13.05  Renee to draft and circulate <u>Exhibit E</u>
32. Block 1/2 Bylaws	City RCD	<b>COMPLETED</b>
33. Block 1/2 Rules and Regulations	City RCD	Renee to re-send
34. Block 3B Condominium Declaration (Section 5.3 of GDA) <ul style="list-style-type: none"> <li>• <u>Exhibit A</u> (Legal Description of the Property)</li> <li>• <u>Exhibit B</u> (Bylaws of the Condominium)</li> <li>• <u>Exhibit C</u> (Condominium Plats)</li> <li>• <u>Exhibit D</u> (Schedule of Percentage Interests and Votes)</li> <li>• <u>Exhibit E</u> (Schedule of Alternative Percentage Allocations, Special Maintenance Items, and Special Maintenance Expenses)</li> </ul>	RCD	
35. Block 3B Bylaws	RCD	
36. Block 3B Rules and Regulations	RCD	

37. Block 5 Condominium Declaration (Section 5.3 of GDA)	City RCD	Renee to circulate redrafts on or about 1.13.05  Renee to draft and circulate <u>Exhibit E</u>
<ul style="list-style-type: none"> <li>• <u>Exhibit A</u> (Legal Description of the Property)</li> <li>• <u>Exhibit B</u> (Bylaws of the Condominium)</li> <li>• <u>Exhibit C</u> (Condominium Plats)</li> <li>• <u>Exhibit D</u> (Schedule of Percentage Interests and Votes)</li> <li>• <u>Exhibit E</u> (Schedule of Alternative Percentage Allocations, Special Maintenance Items, and Special Maintenance Expenses)</li> </ul>		
38. Block 5 Bylaws	City RCD	<b>COMPLETED</b>
39. Block 5 Rules and Regulations	City RCD	Renee to circulate redrafts on or about 1.13.05
40. Construction warranty agreement		KLS to review
41. Parking Side Letter Agreement	City RCD	<b>COMPLETED</b>
42. Executive Summary of Condominium Documents		KLS to draft (include Block 3B)

#### BLOCK 4 GENERAL DEVELOPMENT AGREEMENT

43. General Development Agreement for Block 4 Public Parcel of Rockville Town Square dated June 14, 2004	City FRIT RD Rockville Block 4, LLC	<b>COMPLETED</b>
44. First Amendment to General Development Agreement for Block 4 Public Parcel of Rockville Town Square	City FRIT RD Rockville Block 4, LLC	KLS to draft; many of the same changes as contained in Master GDA amendment

45. First Deposit under the Block 4 GDA (Section 3.1.1 of Block 4 GDA) (\$50,000)	Block 4 Developer	<b>COMPLETED</b>
46. Second Deposit under the Block 4 GDA (Section 3.1.1 of Block 4 GDA) (\$75,000)	Block 4 Developer	<b>COMPLETED</b>
47. Third Deposit under the Block 4 GDA (Section 3.1.1 of Block 4 GDA) (\$100,000)	Block 4 Developer	<b>COMPLETED</b>
48. Notice of satisfaction of conditions precedent (Section 5.3.1 of Block 4 GDA)	Block 4 Developer	Paul to send hard copy letter
49. Pad Work Escrow and Pad Work Development Agreement (Section 8.2.1 of Block 4 GDA)	Block 4 Developer City	See above
50. Evidence of Block 4 Developer's Equity Contribution (Section 3.2.2.2 of Block 4 GDA)	Block 4 Developer	Scott to provide; Pam to draft
51. Binding loan commitment for Construction Financing (Section 3.2.2.2 of Block 4 GDA)	Block 4 Developer Fremont	Scott to provide
52. Parking Purchase Agreement (Section 3.2.2.6 of Block 4 GDA)	Block 4 Developer	Pam to draft
53. Establish Rockville City Parking District (Section 3.2.3.5 of Block 4 GDA)	City	<b>COMPLETED</b>
54. Development Approvals (Section 5.1.2 of Block 4 GDA)	Block 4 Developer	Waive of condition precedent per earlier note—see Exhibit MM (see GDA Amendment); façade is remaining issue; complete 60 days after Phase II Closing
55. Opinion(s) of counsel from Block 4 Developer (Section 5.1.7 of Block 4 GDA)	Block 4 Developer	
56. Opinion of counsel to City concerning City's authority and the enforceability of the Block 4 GDA (Section 5.1.7 of Block 4 GDA)	City	

57. Tri-Party Agreement--Fremont (Section 5.1.8 of Block GDA)	City Block 4 Developer Fremont	Pam circulated draft on 1.9.05
58. Deed to Retail Condominium Unit to Block 4 Developer (Section 5.1.9 of Block 4 GDA)	City	KLS to draft
59. Deed to Residential Condominium Unit to Block 4 Developer (Section 5.1.9 of Block 4 GDA)	City	KLS to draft
60. Cost Plus Construction Contract (Section 5.1.12 of Block 4 GDA)	City	Phase II nearing completion—Dan and Caryn handling
61. Acceptable Site Status Letter (Section 5.1.13 of Block 4 GDA)	City	<b>N/A</b>
62. Removal of USTs on Block 4 (Section 5.1.13 of Block 4 GDA)—Closure letter	City	<b>COMPLETED</b>
63. FRIT Retail Condominium Unit Purchase Agreement (Section 5.1.17 of Block 4 GDA)	FRIT Block 4 Developer	<b>COMPLETED</b>

**DEEDS**

64. Block 4 Deed (Amoco site)	City	<b>COMPLETED</b>
65. Intake sheet for Block 4 (Amoco site)	Title company	<b>COMPLETED</b>

**TITLE DOCUMENTS**

66. Owner's Affidavit (Section 5.3.4 of Block 4 GDA)	City	
67. Title Pro Forma	Title Company	Barbara to issue policy for Block 4
68. Survey of City Land	Surveyor	<b>COMPLETED</b>



69. Subdivision Plat for Block 4	City	<b>COMPLETED</b>
70. FIRPTA (Section 5.3.4 of Block 4 GDA)	City	
71. Memorandum of Block 4 GDA (Section 5.3.4 of Block 4 GDA)	City	KLS to draft

**MISCELLANEOUS**

72. Intellectual property law protection for "Rockville Town Square"—Use Agreement		Pam circulated draft on 11.23.04; Baris responded with comments
73. Licensing Agreement for IP protection		Pam circulated draft on 11.23.04; Baris responded with comments
74. Settlement sheet(s)		Barbara to prepare
75. Escrow closing instruction letters	FRIT City RCD	
76. Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence	FRIT	Include in deed
77. Affidavit as to Total Payment (Block 4)	City	Include in deed
78. Calculation of square footage for purposes of determining the purchase price		

## **DOCUMENTS NEEDING APPROVAL BY CITY**

1. Condominium Documents
2. Phase II Garage Construction Contract
3. Parking Purchase Agreement
4. Cultural Arts Retail Purchase Agreement
5. Construction Warranty Letter Agreement
6. Tri-Party Agreement
7. Final square footage of each Block